

REVISED-TOWN OF NEWPORT, NH

Minutes of the Planning Board Meeting

June 14, 2022 – 6:00 P.M.

Board of Selectmen's Room

15 Sunapee Street

Regular Meeting and Public Hearing

MEMBERS PRESENT: David Burnham, Chairman; Ken Merrow, Vice Chairman; Tobin Menard, Bert Spaulding, Sr., alternate; Herbert Tellor, BOS Representative, Alternate

MEMBER(S) ABSENT: David Kibbey, alternate; Jim Burroughs., BOS Representative; Ray Kibbey

VIDEOGRAPHER: Alex Zander, NCTV

STAFF PRESENT: Christina Donovan, Planning and Zoning Administrator

COMMUNITY MEMBERS PRESENT: Cathryn Baird, Paul Baird, Sam Schneiderhan, Eric Schneiderhan, Virginia Irwin, David Irwin (all abutters Case 2022-SDFP-6 and Case 2022-ANNEX-5)

CALL TO ORDER: Chairman Burnham called the meeting to order at 6:03 p.m. followed by a roll call of sitting members. He appointed Mr. Spaulding, Sr. to sit for Mr. Ray Kibbey. Mr. Herb Tellor, BOS Representative, Alternate sat for Mr. James Burroughs, BOS Representative.

AGENDA REVIEW: On a motion by Mr. Merrow, seconded by Mr. Tellor; *the Board voted to move the Continued Business to after the Cases were heard. The motion passed 5-0-0.*

NEW BUSINESS:

2022-SDFP-5: Fox Family Revocable Trust (owner): Request a final review for a minor subdivision, property identified from Map 231 Lot 021 located at 289 Maple Street in the Rural (R) Zoning District.

Chairman Burnham opened Case #2022-SDFP-5.

Mr. Spaulding, Sr. addressed Chairman Burnham and stated that the Zoning Board will be hearing Case #2022-SDFP-5 on Thursday (June 16, 2022). He asked whether it is appropriate for the Planning Board to hear it tonight (June 14, 2022). He stated he spoke with Ms. Donovan and it has been done in the past. His question was, citing the court case involving Winslow (versus Holderness); could ZBA members be impartial; if the Planning Board approved the case. There was a discussion among the members and Ms. Donovan about the case and the order it has been scheduled. Mr. Tellor asked if there was a reason that there was a specific procedure. There was discussion on the correct procedure. Mr. Tellor requested that Case 2022-SDFP-5 be continued. Mr. Merrow asked Mr. Spaulding, Sr. if he would sit on the ZBA case Thursday. He did not know. Mr. Spaulding, Sr. asked if the Planning Board would entertain a special meeting for the case. There was a discussion on the case and Ms. Donovan was asked if there was urgency for the case decision. The applicant, Kathy Fox, informed the Board the decision was not time sensitive and explained what she and her husband proposed to do on the property. Mr. Merrow stated that given the applicant's information, he ***moved to continue Case #2022-SDFP-5 to the next Planning Board meeting, July 12, 2022 at 6 p.m.*** It was seconded by Mr. Spaulding, Sr. ***The motion passed 5-0-0.***

Ms. Donovan asked if the Board should have an informational meeting to review the applicant's application. The Board members said no. Mr. Merrow thanked the applicants for their patience.

Ms. Donovan addressed Chairman Burnham and stated she had some deeds associated with the Fletcher Road properties.

2022-SDFP-6: HardScrabble Property Management, LLC (owner): Request a final review for a minor subdivision, property identified from Map 206 Lot 006 located at 213 Fletcher Road in the Rural(R) Zoning District.

Chairman Burnham opened Case #2022-SDFP-6.

Chairman Burnham asked for an Administrative Review. Ms. Donovan apologized; she did not have one for the Case. She said the land and its easements as stated in the deed might be something. The Board held a lengthy discussion on the deed and its contents. Mr. Spaulding, Sr. addressed abutter, Virginia Irwin and asked if the easements pertained to the lots. He was told yes. Mr. Spaulding, Sr. requested that the Planning Board table the Case until an attorney gives an opinion of the deed. Mr. Spaulding, Sr. explained that he had reviewed part of the deed and it stated things that could not be done on the property; therefore it needed to go to an attorney for a legal opinion. In reviewing the deed at the meeting, Board members concurred with the request. The easements were particular to the ~~two~~ **three** lots. If divided, the easements remained with the land and had to be abided by. Mr. Spaulding, Sr. stated they had to do the right thing; an opinion from an attorney was needed.

Ms. Donovan stated she could go to the registry and get a copy of the 16 page deed. She could make as many copies of the deed as the Board wanted. Mr. Merrow stated the applicant ~~could~~ **should** get a copy of the deed **(for the Board)**. When asked Mr. Dombroski, surveyor, stated he did not have the information they were discussing. He therefore could not give an opinion. ~~He gave a synopsis of his understanding of the use of the property; that of the applicant is only using the non-conservation part of the property.~~ **He explained the dividing of the property before the conservation easement was created.** What is mapped **(site plan** in Board packets) is non-conservation property. There was a discussion on the property's land use between Mr. Tellor and Mr. Dombroski. Mr. Dombroski agreed that a legal opinion might be a good idea.

Chairman Burnham addressed the Board and stated they had to: 1. Accept it as complete or 2. Table it and get a legal opinion on the easements. The Board should have no further conversation on the Case until it is accepted as complete.

Ms. Donovan stated the Board could accept it as complete and ask for additional information. Mr. Merrow said the statement was an oxymoron. Mr. Merrow asked that the Case be tabled to the next meeting or when the application is complete. **Ms. Donovan asked if it would be Town counsel lawyers or a real estate lawyer who should review the deed and site plan with easements.** Mr. Spaulding, Sr. agreed it needed to be reviewed. **The Board does not determine the review. The Town Manager will determine when the review (Town or real estate) is complete.** Mr. Spaulding, Sr. stated the Board needed to be supplied with copies of the sixteen page deed well in advance of the Planning Board meeting in which Case 2022-SDFP-6 will be reheard. Review Chairman Burnham stated they needed

- **a decision that the lot is not an easement**
- **to be provided with a review of the clause pertaining to the easement**

Mr. Merrow stated the incompleteness of the application is the omission of the property deed. Mr. Merrow and Mr. Spaulding, Sr. told Ms. Donovan that she had to provide the legal opinion and deed to the Board. There was further discussion and information **that was read aloud** by Mr. Spaulding, Sr.

Mr. Merrow addressed the Chairman Burnham and asked if the Board could open the case and based on the information needed request that the applicant provide the documents that are listed in RSA 83-646 ~~and the others~~ (to make the application complete).

Mr. Merrow made a motion that ***the Board not accept the application as complete pending the applicant providing the backup documentation as listed in the property cards(deeds) from Avitar for each of the three lots.***

Mr. Merrow stated the Board's first step was to get the documentation first. A read of the documents might give answers to the questions that the Board needed. He said there should be three separate documents; one for each property card. One document is the deed for each property. Whatever the two others are will be needed. Ms. Donovan asked for clarification what was needed. The Board members had a discussion on the Case. Ms. Donovan asked for clarification of the title search the Board wanted. Mr. Spaulding, Sr. offered to do the title search for Ms. Donovan. Mr. Merrow stated the applicant ~~should~~ **needed to** provide the documents the Board needed.

Chairman Burnham stated the Board's request:

- 1) **Decision** from a legal counsel that it is okay to subdivide with the restrictions noted in the deeds.

Ms. Donovan stated for clarification: Review of the deeds by legal counsel prior to the Case going before the Planning Board (next month).

Chairman Burnham stated there was a motion on the floor **to not accept the application as complete**. He asked for a second. Mr. Spaulding, Sr. seconded the motion. ***The motion passed 5-0-0.***

Chairman Burnham stated the application will be referred to the applicants to acquire the information needed.

On a Point of Order, Mrs. Irwin asked for the role of the abutters in the proceedings. She was told that the abutters could engage when the hearing was opened to the public. Mrs. Irwin thanked Chairman Burnham. Chairman Burnham stated the Planning Board's Rules of Procedure and when the public could participate.

Mrs. Baird addressed Chairman Burnham and asked a Procedural question. She said she was concerned about the process. It asks for informational, preliminary and final. The Board was given a copy (stamped) May 24, 2022. She asked when information is preliminary. Chairman Burnham said it was a guide the Board went by. He explained that some towns did a meeting for informational (and go home). The next step is (a) preliminary (meeting). It requires two months. Newport allows the applicant to get their documents together and present it as complete (the reason for the motion and vote at the meeting). The Board then goes into the meeting. It saves time and money. If there are technical issues the board does not understand and need to be addressed the meeting is continued. She thanked Chairman Burnham.

Mr. Eric Schneiderhan asked if the Society of Protection of NH Forests was notified of the meeting. They have owned the easement abutting the property since 2006. He was curious to know if they were notified of the meeting. Chairman Burnham did not know; Ms. Donovan said she did (notified) the abutters. NH Fish and Game were notified. He pointed out that they (Society of Protection of NH Forests) were an integral party in the Case. There was a discussion between Mr. Spaulding, Sr. and Ms. Donovan on abutters of the land. Mr. Spaulding, Sr. stated it was another reason the document (deed) needed to be read (by an attorney).

Ms. Donovan asked who the applicant was, who submitted the application. There was a lengthy discussion on the owners of the property and of the easement. Mrs. Irwin stated the owner of the easement had not been notified.

2022-ANNEX-5: HardScrabble Property Management, LLC (owner): Request a final review for an annexation, property identified from Map 206 Lot 003 and Lot 004 located at 244 Fletcher Road in the Rural(R) Zoning District.

Chairman Burnham opened Case #2022-ANNEX-5.

Mr. Merrow made a motion that ***the Board call the application for Case #2022-ANNEX-5 as incomplete for lacking the legal documents to review the deed restrictions.*** It was seconded by Mr. Spaulding, Sr. ***The motion passed 5-0-0.***

Ms. Donovan asked, for clarification, the items the Board wanted her to do. She was told: get the backup documentation from the applicant; with the Town Manager's assistance choose counsel to review and give an opinion on Case #2022-SDFP-5 and Case #2022-ANNEX-5. Chairman Burnham said she was to bring the

opinion to the Planning Board. There was further discussion on steps she was to take. Mr. Tellor asked about the Society of Protection of NH Forests and their legal department. Ms. Donovan will check with legal counsel to see if the Town could use the legal counsel of an easement holder.

Chairman Burnham thanked the abutters for attending the meeting and for their participation.

Mr. Merrow ***moved to continue Case #2022-ANNEX -5 to the next Planning Board meeting on July 12, 2022 at 6 p.m.*** It was seconded by Mr. Spaulding, Sr. Mr. Spaulding, Sr. said the Board was “pushing the envelope” to get the legal counsel opinion done. Chairman Burnham called for a vote. ***The motion passed 5-0-0.***

Chairman Burnham stated the Case #2022-ANNEX-5 and Case #2022-SDFP-5 would be heard pending the information needed.

CONTINUED BUSINESS: Mylar signing (O'Connor, Barton, Whitting Cases)

The Board members present signed the Mylars for applicants O'Connor, Barton and Whitting Cases.

Minutes: May 17, 2022

It was noted that the minutes of April 12, 2022 had been tabled to the June 14, 2022 meeting. The Board members were not prepared to vote on them. Chairman Burnham requested they be tabled to the July 12, 2022 meeting.

May 17, 2022

On a motion by Mr. Spaulding, Sr. ***the Board moved the May 17, 2022 minutes of the Planning Board meeting.*** It was seconded by Mr. Menard. In discussion Mr. Spaulding, Sr. questioned the easement noted in the minutes concerning the Barton Case and the name of the Board member on Page three, Line two of Paragraph four. When asked, the recording secretary stated she believed it was Mr. Ray Kibbey. Mr. Kibbey was the Board member frustrated with Mr. Karr's statements. Mr. Spaulding, Sr. asked that the minutes show that the Board member was Ray Kibbey. Mr. Spaulding, Sr. made a motion ***to approve the minutes as amended.*** It was seconded by Mr. Menard. ***The motion passed 4-0-1 (Tellor abstained).***

ADMINISTRATION:

Master Plan Review

The members of the Planning Board discussed the upcoming 2022 Master Plan Survey. They continued reviewing the 2010 survey, reviewing the different sections and eliminating questions they believed were not pertinent in an order to make it user friendly and to obtain a large community response. The Board agreed to continue their work on the Master Plan at a future meeting.

COMMUNICATIONS:

Board: There was a discussion on Annexation, Lot Line Adjustment and Subdivision terms, and the research Mr. Merrow had been doing.

There was a lengthy discussion on the proper procedure of applicants going before the Boards.

Mr. Tobin Menard asked if Ms. Donovan had acquired the updated traffic numbers for the Spring Street Development for the Board. Ms. Donovan stated she hadn't. She was directed to get the updated traffic numbers for the Board before the July 12, 2022 meeting.

Mr. Herb Tellor was concerned with the Planning Board members' agreement at the May 17, 2022 meeting with the Memorandum Traffic Assessment by the Avanru Development Group. He stated that the four page assessment was not a full traffic study as the Planning Board had requested when it made their conditional approval. He explained that a traffic study takes into account more than just the numbers. The assessment didn't take into account Spring Street or any of the intersections at the end of the road. He explained that a traffic study takes into account the impact of the traffic on intersections of the road; pedestrian traffic; the safety of people walking in the area with the added traffic. Mr. Tellor stated there was a whole conglomerate that goes

with a traffic study; that is why he had specified a traffic study (at the meeting). Mr. Tellor said that what had been given to the Board was not what it had asked for.

Mr. Tellor said the Planning Board seems to be getting a lot of these problems such as the lighting downtown. Applicants are making changes and not getting approval for the changes. When caught they state they had to do it and then asked for permission. Mr. Spaulding, Sr. agreed with Mr. Tellor. Mr. Tellor listed additional Cases in which the applicants had not followed the approvals given.

Mr. Tellor said Avanru Developers have had two years to do a traffic study while they waited for their money (grants). Mr. Merrow said that the burden is on the applicant (to meet conditions in an approval). Chairman Burnham said that the Board asked for a traffic study. The engineer that wrote the assessment report said there is no need to do a traffic study. Mr. Spaulding, Sr. stated that the reality is that developers will use an engineer who will give them a favorable report, that's what they (engineer) are paid to do.

Mr. Merrow said at the (Planning Board) meeting it had been stated that the Town would have a traffic study done; paid by the applicant. Ms. Donovan stated that given the information presented to her she would have to contact legal (counsel) or the engineer and ask if his assessment was the same thing as a traffic study. Mr. Tellor said she should go to the NH Municipal Association with her question. Ms. Donovan had further questions. Mr. Merrow asked if Newport had an Upper Valley Lakes Region Planning Commission contact to ask 'what should be received if you ask for a traffic study versus an assessment'? There was a debate on definitions of a traffic study and who should be called. Mr. Merrow stated he would ask friends in Hanover about traffic studies and what they entailed. Mr. Tellor stressed that Mr. Franks resisted a traffic study (at the Avanru meetings) because of all it entailed: money, time, everything. He (Franks) pushed for a memorandum. Mr. Tellor said the Planning Board needed to get an outside opinion on the assessment the Board was given.

Mr. Spaulding, Sr. said they (Planning Board) should insist that the traffic study be done by the Town and paid for by the applicant. Mr. Tellor stated he remembered the approval and condition was that: The traffic study would be done, with the firm used approved by the Public Works Director, Todd Cartier.

From Planning Board meeting 2020/09/22 Page 10 of 10

Mr. Merrow made a motion *to approve Case 2020-SPFP-002: Avanru Development Group/Jack Franks final review of a site plan for the property. The following conditions will be met:*

- 1. Installation of sidewalk along the frontage of Spring Street pending acceptance by the Town.*
- 2. Redi-rock retaining wall is consistent with what was given to the Board on September 22, 2020 (including barrier wall/comply with Zoning Ordinance)*
- 3. Sight lights (to comply with Zoning Ordinances)*
- 4. Sign (to comply with Zoning Regulations)*
- 5. All parking and storage to be (100%) on-site during construction phase*
- 6. Independent Traffic Study (Applicant will undertake a traffic study at his expense approved by Public Works and will agree to do improvements required by the traffic study. Mr. Franks will return to the Planning Board if costs are exorbitant.)*

It was seconded by Mr. Tellor. Chairman Burnham called for a vote. **The motion passed 4-0-0.**

There was further discussion on the need to get a traffic study. Afterwards, Mr. Spaulding, Sr. offered to go on the Planning Board due to the resignation of Sean Glasscock. Mr. Merrow advised against it. Mr. Spaulding, Sr. is a full member of the ZBA. There was a conflict with Cases tonight; he will not be sitting on Thursday for a case due to it. Ms. Donovan asked Mr. Spaulding, Sr. if he will be recusing himself on the Fox Family Case on Thursday at the ZBA. She needed to ensure there was a quorum. Mr. Spaulding, Sr. stated he was not sure.

Public: none

With no more business in the public meeting, on a motion by Mr. Merrow, seconded by Mr. Tellor; **the Board voted to adjourn at 8:53 p.m. The motion passed 5-0-0.**

Respectfully submitted,

Maura Stetson, Scribe

Approved: July XX, 2022

The next meeting of the Planning Board will be on July 12, 2022 at 6 pm in the Board of Selectmen's Room.

DRAFT