

TOWN OF NEWPORT, NH
Minutes of the Planning Board Meeting
February 14, 2023 – 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; Michael Luccio, Ray Kibbey, Bert Spaulding, Sr., alternate; Herbert Tellor, BOS Representative Alternate

MEMBER(S) ABSENT: James Burroughs, BOS Representative; Tobin Menard

VIDEOGRAPHER: NCTV

STAFF PRESENT: Christina Donovan, Planning and Zoning Administrator

PUBLIC PRESENT: Donna Magoon, Interim Superintendent; Jenny Reks, Case 2023-SDFP-1; via zoom: Jon Rokeh, Rokeh Consulting, LLC; Ron DeCola, applicant Case 2023-SPFP-1

CALL TO ORDER: Chairman Burnham called the meeting to order at 6:02 p.m. followed by a roll call of sitting members. Mr. Bert Spaulding, Sr. was appointed to sit for Tobin Menard's seat and Mr. Herbert Tellor was appointed to sit for absent BOS Representative, James Burroughs

AGENDA REVIEW: Ms. Donovan addressed the Board and requested that the Update on the Hockey Rink/Vocational Building be heard first to accommodate Ms. Magoon (Interim Superintendent) who was in attendance to hear what the Town had found out about the land that the hockey rink had been on. Mr. Merrow made a motion *to move the conversation on the Update on Hockey Rink/Vocational Building to after agenda review*. It was seconded by Mr. Spaulding, Sr. *The motion passed 5-0-0.*

Update on Hockey Rink/Vocational Building (for complete discussion, go to: www.nctv-nh.org)

Ms. Donovan said that comments on the hockey rink could also be made during public comment. The agenda item was to give the Board an update. She proceeded:

The hockey rink was built on land that was purely designated for recreational purposes and has to stay that way unless there is a replacement in kind somewhere else. Continuing, she explained that:

- 1) The land did not have to abut or be adjacent to the school or the property in question. Land currently used for recreation could not be the substituted land for the rink
- 2) The school has been working with the state getting information; Ms. Donovan has also collected information on the land, its use and the grant
- 3) After the Planning Board meeting Ms. Donovan will be updating the Town Manager because in 1995 the School Superintendent and the Town Manager (at the time) were on all the grant documents; it was a joint grant
 - a. It is not a School issue or a Town issue; they are both in it together.

Because the Planning Board had building items of concern (see minutes of January 10, 2023); she wanted to bring the grant information to their attention and to inform them that the grant stipulations needed to be completed before permitting could begin. If the Planning Board had additional questions, wanted her to update the members going forward; she will comply with their request.

Mr. Merrow asked if it was still unclear from the grant search who has ownership. Ms. Donovan said she believed legal counsel should be involved; it would be a decision by Town Manager Rieseberg (Town side). Continuing, Ms. Donovan said that documents indicate it was a joint grant (approving money, conditions into perpetuity) and thus should be a collaborative effort.

Mr. Merrow said if the school agreed to use land (for recreation) to satisfy the terms of the grant...Ms. Donovan stated it might be costly (she agreed cost was not for discussion).

Mr. Spaulding, Sr. stated a quid pro quo could be done. The school believes they have enough land to do it (replacement in kind).

Mr. Karr asked to be recognized. He asked what Mr. Spaulding, Sr. meant (quid pro quo).

Mr. Merrow said Ms. Donovan's presentation stated it needed to go to Town Manager Rieseberg and the school to satisfy the terms of the grant. Ms. Donovan said the Planning Board had stated the condition:

(From the minutes of the January 10, 2023 Planning Board meeting: The items of concern were repeated by the Board and Ms. Donovan:

1. The stormwater maintenance manual and plan (needs to be filed with the Town to ensure it is implemented-part of building permit)
2. The sewer line (replacement). Mr. Beal will have the school bring it to the Public Works Department
3. Diagrams for the lighting and photo metrics
4. Signage. Proposed lighting for sign.
5. New structure. 9-1-1 number required (part of building permit)
6. The grant for the school recreational facilities and any stipulations)

The School would have to go before the Planning Board to have the condition removed; but the state requirement was that approximately ½ acre needs to be set aside strictly for recreation. Mr. Merrow said that an agreement (quid pro quo) between the School and Town will have to be done before they go forward with their building. Mr. Spaulding, Sr. testified it will be done. They had done hiking and measuring. Mr. Merrow said the School could not give a mountain top area as a flat (recreation) area. There was a brief discussion on the general location.

Ms. Donovan stated:

1. It could not be land that is already being used for recreation (i.e. town/school forest land or other)
2. The grant stipulations needed to be solved

Mr. Luccio arrived at the Planning Board meeting at 6:10 pm.

Chairman Burnham opened the conversation to the Public:

Mr. Ed Karr said he had spoken to a State Parks and Rec employee in Concord concerning the recreation. He had learned about the different Acts involved. He cited Act 54 and 36 which dealt with the exchange process. He explained one condition;

- The removal of a facility when someone determines it is obsolete and unusable. The stipulation is that a building cannot be placed there; it has to be replaced (not necessarily the same thing) in kind.
- Problematic encumbrance is if an entity wants to put a building there; they have to replace the land (school/town situation) and designate it as a recreation area.
- The reality is that the grant was made out to the Town. The Town would bear the brunt of the problems if the grant stipulations had not come to light. The Town needs to make a request and get the approval of the state group in Concord.

Mr. Karr said that he had believed that it was a joint grant; the state representative had told him that grants were only awarded to towns. The agreements were for usage of the property. Chairman Burnham thanked Mr. Karr for the information.

Chairman Burnham asked if there was another individual from the public that would like to speak. Ms. Magoon said that Mr. Karr was correct. What he said was perfect. The land that the School wants to build on was grant funded. What the state said was what the School needed to do was find another piece of property in a different location and stipulate it for recreational use. Continuing, Ms. Magoon said she was informed by the state that the land did not have to be cleared but it did have to be the same size. She gave an example of fulfilling the stipulations. The state did say that it would not hold up permits while they were going through the process of satisfying the terms of the grant. She would get this in writing if the Planning Board requested it.

Mr. Merrow said he would like to pass on the problem to Town Manager Rieseberg and the Selectboard for a legal decision. Ms. Donovan agreed, saying the Town and School needed to have things in writing. They needed to decide the alternative land, the cost and the use (to satisfy the terms). There was a general discussion between Ms. Donovan and the Board. Mr. Karr reminded them that any costs would be the burden of the taxpayers. Penalties included future grants (state and federal) would not be awarded until this was solved and proof was given to the state. He said this needed to be a lesson learned. How did it get missed? Where was the (grant) documentation?

Mr. Spaulding, Sr. stated it should have been recorded; other documents have had land stipulations recorded. Ms. Donovan addressed the Board and stated she was passing it to Town Manager Rieseberg and legal counsel.

Chairman Burnham closed public comment.

CONTINUED BUSINESS:

2022-SPFP-3: North Newport Land Holdings, LLC: request final review to approved site plan for the property identified as Map 218 Lot 004. The proposal is to construct a 96 unit housing complex. The property is located on North Main Street in the Rural (R) Zoning District.

Staff informed the Board of an official request by the applicant to continue the Case. Mr. Merrow made a motion *to continue Case 2022-SPFP-3 to the Planning Board meeting on March 21, 2023 at 6 pm in the BOS Room.* It was seconded by Mr. Tellor. *The motion passed 5-0-0 (Spaulding did not vote).*

NEW BUSINESS:

Mr. Spaulding Sr. recused himself from Case 2023-SPFP-1.

2023-SPFP-1: 169 Sunapee Street, LLC (owner) Ron DeCola (agent): Request a final review to approve site plan for the property identified as Map 114 Lot 032. Proposal is a new construction for a multi-unit housing complex. The property is located at 21 Cross Street in the Industrial (I) Zoning District.

The Board members questioned the plans and documentation in their packets. Ms. Donovan stated the checklist and department head reviews were in the Board packets. Of concern to Board members were:

- Public Works Department Review stated the applicant needed to submit a full set of construction plans, a traffic study was required, information was needed for sidewalks and lighting. Ms. Donovan negated the need of them from the Town, the area was the purview of NH DOT

Mr. DeCola asked if he could give his presentation. Many of the Board's questions would be answered by their information.

Also of concern to Board members were:

- If there were any covenants on the rail trail land that the applicant wanted to use for their driveway entrance. Ms. Donovan will contact the state DOT.
- Two buildings on one lot; will need two 911 addresses
- Lack of building sections, height dimensions (on plans)
- No plans that indicate all floor plans or their elevations
- Fire Department Review stated drawings show there will only be access to 1 ½ sides of the building. They need access to three sides.

Ms. Donovan addressed Mr. Jon Rokeh and reminded him he was supposed to send her elevation measurements. He said everything was in a pdf; he could put it on the screen in the BOS room. The architect had finalized it on February 14, 2023. Ms. Donovan stated for clarification that the Board did not have the elevations or floor plans in their packets. She had needed the elevation before the meeting.

The Board members discussed the submitted documents, department reviews and omissions from the checklist among themselves. Mr. Spaulding, Sr. said that the applicants could send the information (at the meeting) but it violated the public right to know (information) beforehand. When the application is submitted it should be complete. If it is not complete the case needed to be continued.

Ms. Donovan asked the Board what they were missing from the applicant. Mr. Merrow and Chairman Burnham stated the building plans so they could review it in whole. Mr. Merrow listed omissions cited by Department Heads and the checklist. When Ms. Donovan asked for clarification, Mr. Merrow said they needed a complete set of the building plans (they listed the items included in a plan set).

Mr. DeCola addressed Chairman Burnham and stated he had the entire information ready in his presentation if they would be allowed to give it. Chairman Burnham stated if the information is not in the packets (as noted in the checklist) they could not make a decision. The Board could not accept the packet as complete.

Ms. Donovan said the building was almost identical to a plan that was approved a year ago. Mr. Merrow stated in the previous submission the Board had building plans that had complete elevations. The neighbors were in attendance complaining about the proposed three story building. The Board and neighbors discussed those concerns.

Mr. Spaulding, Sr. asked Ms. Donovan if there was a submitted checklist in Board packets. She stated yes. He asked if one of the questions concerned elevations. Yes, #7 Exterior elevations. Mr. Spaulding, Sr. addressed Ms. Donovan and said there was a reason for the process (mailing to the abutters, getting the information beforehand to be available to public). If the applicant's information was received now; it would not be in compliance with the process. Ms. Donovan agreed, stating if everything was not submitted the Board should not accept it as complete.

Mr. Merrow addressed Ms. Donovan and stated they were missing information from numbers 6, 7 and 14 of the Planning Board (Site Plan Review) Checklist. For those reasons the application was incomplete.

Mr. Merrow made a motion that ***the Board not accept the application of 2023-SPFP-1 as complete due to items 6, 7 and 14 of the (Planning Board Site Plan Review) Checklist.***

Ms. Donovan requested that the motion be specific on number six.

- ❖ She was told "shape, size and location..." the Board had flat plans, they had one floor; not all the floors. They were not shown the height of the building or the roof profile.
- ❖ Number 7: Conceptual plans, floor plans, elevations, etc....
- ❖ Number 14: Exterior lighting plans... cannot be approved unless the Board sees it (lighting) on the elevations. A previous case and problem that occurred was cited.

Chairman Burnham added the Department Heads reviews that needed to be corrected. The submission to the Board was not adequate. He also asked that Ms. Donovan contact NHDOT concerning the rail trail and driveway permit. Chairman Burnham called for a second. The motion was seconded by Mr. Kibbey. ***The motion passed 5-0-0.*** The application was not accepted as complete.

Mr. DeCola addressed the Chairman Burnham and asked that comments be entered into the record. Chairman Burnham asked him to continue.

Mr. DeCola said that:

- 1 They were lead to believe their submission was complete. He was shocked to hear this (at the meeting).
- 2 They were not allowed to make their presentation at the meeting. It prevented them from answering many of the Board's justifiable questions. They (DeCola and Rokeh) could have answered every one of the Board's questions; but were not allowed to.
- 3 Mr. Spaulding, Sr. recused himself and then participated in the meeting. Mr. DeCola wanted it in the record that he (applicant) objected to it strenuously.

Mr. DeCola said that they would be back March 21, 2023 and will go over the presentation with the Board. Their presentation will be the same (as was prepared for February 14, 2023). They are frustrated; they do not believe they were given due process at the meeting.

Chairman Burnham said the Board couldn't allow the applicant to give a presentation if the Board does not deem it (the checklist) complete. He explained it is the law; that's the way it is. The applicant had things checked off on the checklist that were not provided to the Board members. He stressed that even the fire department didn't know how to get around the building. Information was incomplete for them.

Mr. Tellor addressed Chairman Burnham and stated that Mr. Spaulding, Sr. has a right to participate as a private citizen. Chairman Burnham agreed with Mr. Tellor.

Mr. DeCola stated that the hearing was never opened for him (Spaulding) to participate. Mr. Spaulding, Sr. said that he could if he was recognized by the Chairman (of the Board).

Chairman Burnham stated that they were done with the case at the meeting. Mr. DeCola thanked Chairman Burnham and stated he would return next month (March 21, 2023).

Mr. Spaulding, Sr. retook his seat at 6:51 pm.

2023-SDFP-1: Tyler Made (owner): Request a final review for a minor subdivision, property identified as Map 231 Lot 031, located at 417 Bradford Road in the Rural (R) Zoning District.

On a motion by Mr. Tellor, seconded by Mr. Spaulding, Sr.; ***the Board accepted the application as complete. The motion passed 6-0-0.***

There was a general discussion between the Board members and applicants on the proposed changes to make a non-compliant lot compliant for a minor subdivision.

There was no public in attendance.

Chairman Burnham asked if there were any questions from the Board. Mr. Kibbey asked if the change made them compliant with road frontage. He was told yes.

Ms. Donovan said they are legal nonconforming in regards to road frontage. She stated that the subdivision will make it more conforming. Mr. Spaulding, Sr. explained the grandfathered status of the entrance. Ms. Donovan corrected herself stating one lot is fully conforming; one is nonconforming in regards to road frontage.

Mr. Spaulding, Sr. made a motion to approve *the minor subdivision for Case 2023-SDFP-1*. It was seconded by Mr. Merrow *The motion passed 6-0-0*.

The Board members signed the site plans for the Planning Office files.

Ms. Donovan addressed the applicants and stated they needed to submit a Mylar to her office (Planning and Zoning) for registering at the Sullivan County Registry of Deeds.

2023-SDFP-2: Sheridan Mead (owner) Patrick Dombroski (agent): Request a final review for a minor subdivision, property identified as Map 260 Lot 001, located at 480 Unity Road in the Rural (R) Zoning District.

Mr. Kibbey said he would have to recuse himself from sitting on the case. It was explained that there would only be a vote to continue. Mr. Kibbey stayed but would abstain in the vote.

Staff informed the Board of an official request by the applicant to continue Case 2023-SDFP-2. Mr. Merrow made a motion *to continue 2022-SPFP-2: Sheridan Mead (owner) Patrick Dombroski (agent): to the Planning Board meeting on March 21, 2023 at 6 pm in the BOS Room*. It was seconded by Mr. Spaulding, Sr. *The motion passed 5-0-1 (Kibbey abstained)*.

Minutes: January 10, 2023

Mr. Spaulding, Sr. made a motion *to approve the minutes of the January 10, 2023 Planning Board meeting as presented*. It was seconded by Mr. Merrow. *The motion passed 5-0-1 (Luccio abstained)*.

ADMINISTRATION:

Approval of Master Plan Survey

Ms. Donovan stated there were two items to review:

1. The approval
2. The mailing.

She had gotten quotes for mailing a survey. There were 4,000 dwellings in Newport. The cost would be approximately \$3,000 to print, stuff the envelopes and mail the survey with a return envelope. There will also be an online survey option. Both will contain the survey that is approved by the Planning Board. Mr. Tellor asked if it could be an insert to Newport Times. In discussion, Board members stated they felt it was important enough to have it as a stand-alone item.

The Board discussed and made changes to the survey:

Page one:

Survey date change: 2022 to 2023

Forum (one public hearing needed) at Richards School was changed to BOS room

Date of Forum: May 23, 2023 at 6 pm

Have surveys at Town Meeting (Deliberative Session) was discussed.

B. survey online at town website on home page: www.newportnh.gov or a URL link.

C. complete survey by June 1, 2023

Page three:

There was no question for the second column on the page.

The printing company will reformat the survey to improve its appearance and shorten its length.

The Board members agreed that the survey will be ready for mailing with the stated changes.

Mr. Merrow made a motion *that upon final draft edits as discussed at the February 14, 2023 meeting that we (the Board) accept and issue the survey*. In discussion it was stated the changes would be made and sent to the Board for approval via email. It was seconded by Mr. Luccio. *The motion passed 6-0-0*.

COMMUNICATIONS:

Board: none

Public: none

With no more business in the public meeting, on a motion by Mr. Merrow, seconded by Mr. Luccio; *the Board voted to adjourn at 7:24 p.m. The motion passed 6-0-0.*

Respectfully submitted,



Maura Stetson, Scribe

Approved: March 21, 2023

The next meeting of the Planning Board will be on March 21, 2023 at 6 pm in the Board of Selectmen's Room.