

**PLANNING BOARD  
RINDGE, NEW HAMPSHIRE  
October 1, 2013**

**DATE: October 1, 2013      TYPE: Public Meeting      APPROVED: 10-15-2013**

**TIME: 7:00 pm**

**CALL TO ORDER: 7:00 pm**

**ROLL CALL MEMBERS:** Chairman Kirk Stenersen, Hank Whitney, Bruce Donati, Charlie Eicher

**ROLL CALL ALTERNATES:** Holly Koski

**EX OFFICIO:** Roberta Oeser

**PLANNING DIRECTOR:**

**PLANNING SECRETARY:** Susan Hoyland

**APPOINTMENT OF ALTERNATES:** Holly Koski to sit for Phil Simeone

**OTHERS PRESENT:** Paul Grasewicz, Rick Kohlmorgen, John Kucich (Bohler Engineering), Peter Imse (Sulloway and Hollis), Matthew Snyder (Sulloway and Hollis), Heather Monticup (Greenman Pedersen, Inc.), Bob Duval (TF Moran) Mark Derby (Cleveland Waters and Bass), Teresa Machmer, Mary Kay Riordan, Richard Mellor, Jim Lafleur, David Drouin, Robb Anderson,

## 1. ANNOUNCEMENTS

Bruce Donati said that there will be a walk of the Pearly Pond Watershed in the near future. He does not yet have that date but will make sure Board Members receive that information.

## 2. APPROVAL OF MINUTES

### a. September 17, 2013 Public Session

**MOTION:** Roberta Oeser moved to approve the minutes of September 17, 2013 with a minor typographical correction to be provided by Kirk Stenersen. Charlie Eicher seconded the motion.

**Vote: 6-0-0**

## 3. OLD BUSINESS

**a. Continued from September 3, 2013: CONSIDERATION OF** an application for a Minor Subdivision submitted by Kohlmorgen Housing -2 LLC. The property is located at Tax Map 8, Lot 7-4 Wallace Road. The applicant is seeking approval for a two lot subdivision. Paul Grasewicz of GRAZ Engineering will be presenting this proposed plan\*

Rick Kohlmorgen said that the last time he was here, the board had expressed some concern about the legal right to pass and repass. At that time, the Board had requested that Mr. Kohlmorgen have a conversation with Rick Donovan as it pertains to Fire Safety. He said he had a conversation with Rick Donovan who said everything should be fine.

Meeting Minutes  
October 1, 2013 KS, KM, RO, HW, CE, BD, HK, BG, SH

Rick Kohmorgen distributed copies of a letter from Atty. John J. Ratigan, Donahue, Tucker and Ciandella, PLLC which addressed the Wallace Road right of way access easement and concluded that the “existing easement rights held by the owner of the Kohlmorgen property can be utilized to provide separate, deeded access to the two lots that are proposed to be created by this subdivision.”

Bruce Donati asked if the plans had been corrected to reflect the correct measurements for one of the boundary lines. He also questioned the encroachment of the existing gravel driveway on lot 7-4-2.

Paul Grasewicz provided the Board with an updated set of plans which corrected the boundary line measurement, and added a note for the State Subdivision approval. Mr. Grasewicz said he will put a stake and pin in the gravel where it goes over the property line. Plan Distributed: GRAZ ENGINEERING, LLC Minor Subdivision Plat of Map 8 Lot 7-4; 24 Wallace Road, Rindge, NH Owner: Kohlmorgen Housing 2, LLC, 220 Woodbound Road, Rindge NH 03461; June 11, 2013 Revised 10/1/13.

Roberta Oeser said that while she had respect for John Ratigan’s legal opinion, she thought that Town Counsel should review this. Chairman Stenersen agreed with Roberta Oeser and said that the cost for that should be borne by the applicant.

Richard Kohlmorgen said that this would mean he had to pay for two attorneys and questioned this. Bruce Donati asked if this was necessary and standard practice.

Roberta Oeser and Chairman Stenersen said that it was important for the board to protect the Town and to exercise due diligence. Roberta Oeser said that Town Counsel’s approval would serve to protect Rick Kohlmorgen as well.

**MOTION:** Charlie Eicher moved to approve this subdivision with the condition that it needs approval of town counsel. Roberta Oeser seconded the motion. **Vote: 6-0-0**

**b. Continued from September 3, 2013: CONSIDERATION OF** an application for a Major Site Plan Review submitted by Wal-Mart Real Estate Business Trust c/o Bohler Engineering. The property is located at Tax Map 6, Lot 98 at 750 US Route 202. The applicant is seeking approval for an expansion of an existing retail store in the Business/Light Industry District

Mr. Peter Imse, of Sulloway and Hollis Law Firm introduced John Kucich of Bohler Engineering, Heather Monticup of Greenman Pederson, and Matt Snyder of Sulloway and Hollis. Mr. Imse said that some changes have been made based on comments at the last meeting specific to:

- Wastewater treatment/drainage
- Traffic Study
- Hannaford’s letter
- Outdoor Storage
- Wetland Buffer issue

Meeting Minutes  
October 1, 2013 KS, KM, RO, HW, CE, BD, HK, BG, SH

He asked John Kucich to begin the presentation:

Outdoor Storage

John Kucich said that Board members asked, at the last meeting, for information relating to the actual operations at the Wal-Mart store today as it pertains to Outdoor Storage. He provided a 'map' of the existing outdoor storage. Essentially, outdoor storage at its maximum takes 92 parking spaces of the existing lot. Storage starts in May, peaks mid-May when they start using the perimeter. They wind down during summer months and then strip it back. During the winter months, they have some wood pellets in a small area. Items that are stored include hardscape items, bricks, stones, plantings, lawn equipment, wheel barrels, top soil, bagged mulch and typical garden center items and wood pellets. Wal-Mart would like to continue that operation, during the same time periods that they are currently utilizing, in the same areas that they are currently utilizing. There would be no new merchandising and the Garden Center would remain the same. John Kucich said that the goal is to keep everything the same as it is now.

Drainage System

John Kucich said that essentially, they are adding less than an acre of impervious area. (.9 acre) He said they need to create a drainage system that will essentially hold back the water, and then let it out slowly, to minimize any impact to abutters and that what they are proposing is a redundant system.

They are designing towards two sets of regulations; the state and the town. He described for the Board the way that system would work. One of the concerns at the last hearing was what would happen if the system filled up with water. John said that he had addressed this in his calculations and that the first infiltration measure is not counted whatsoever in the calculations. If you were to have back to back storms, and there was water in this, there would be no impact to the drainage system or abutters. This system is twice as big as it needs to be.

John Kucich said that there were comments made at the last hearing asking for additional inspection ports around the system. He said that those have been added and that that was a valid point. He also said that they will be wrapping the pipes with fabric to catch any sediment that happens to pass the catch basins and the water quality unit. He said that this is located under the pavement.

Traffic

Heather Monticup said that the NH DOT driveway permit has been approved. She provided the Board with a copy of that permit. She said that at the last meeting, Hannaford's had expressed concern about how the existing store relates to trip generation numbers. She provided the Board with a new graph as part of her Traffic Sensitivity Analysis and explained the rationale for these numbers.

Roberta Oeser asked about the sign which has been broken off and suggested a bolt system for installing the replacement. Heather Monticup said that perhaps the sign should be moved back and that installation would need to comply with NH DOT regulations.

Meeting Minutes  
October 1, 2013 KS, KM, RO, HW, CE, BD, HK, BG, SH

Research Documents

Peter Imse said that when Matt Snyder was in the Planning Office doing research, he was asked by a planning board member to share documents. He has provided a copy of those documents to the board.

Possible Waiver for Outdoor Storage

Peter Imse said that they had not filed a waiver up front for outdoor storage. He said that the proposal today is to put outdoor storage in the same place as it currently is and that perhaps that is a grandfathered use. In the event that it is needed, he has provided a letter requesting a waiver and asked that the board confirm to him if a waiver is needed and grant one if necessary.

Roberta Oeser said that she does not have a problem with the parking lot storage, but that the merchandise that is piled up in front of the store is a problem. She said this gets really unattractive. Peter Imse said that they are not showing this area as an outdoor storage area. Roberta Oeser said that this may be addressed at a later time.

Response to Hannaford's letter

Peter Imse provided the Board with a copy of the Sulloway and Hollis response to the Hannaford letter of David W. Rayment, Esq. In that letter, three major issues were discussed:

- Submission of Design Plans for a Wastewater Treatment Plant
- Waiver of Section VII (11) Relative to Impervious Cover
- Wetlands Buffer – Interpretation of Section 4(G)

Wetland Mitigation Area

Peter Imse said that, at the last meeting, the Chair had a plan which showed the wetland mitigation area and that those plans lead one to believe that those detention areas were not treated as wetland areas. Mr. Imse said that, upon further research of both Planning Board and Conservation Commission meeting minutes, it appears that the math indicates that those areas are counted as wetlands.

Peter Imse said that in 2011 the Board looked at this issue, the Code Enforcement Officer looked at this issue, the Town Planner looked at this issue and all agreed that this type of construction of this fire access lane is consistent with Section 4G of your Wetlands Ordinance and we would request that the Board simply re-affirm that interpretation of the ordinance, so that we know we have a plan that we can go forward with.

*Chairman Stenersen opened the floor up to the Public for questions and comments:*

Mark Derby of Cleveland, Waters and Bass introduced himself and Hannaford's engineer, Robert Duval of TF Moran. Mr. Derby said:

Meeting Minutes  
October 1, 2013 KS, KM, RO, HW, CE, BD, HK, BG, SH

- He agrees with Wal-Mart's conclusion: that the detention ponds are part of the wetlands.
- Waiver with respect to sewage disposal system. Hannaford's concern is that the conditional approvals make it clear that this is a condition subsequent and that it include a public hearing once Wastewater Treatment plans are submitted.
- Disagreement on the interpretation of 4G of the Wetland's ordinance. Disagreement with interpretation of 'productive use'. Hannaford's solution would be for Wal-Mart to go before the ZBA for a variance to 5A of the Wetland's ordinance
- Even with the interpretation of 4G, Wal-Mart is required to show that this is the only place to put this addition and that it could go no other place.

Robert Duval of TF Moran said that the very bottom line of the Traffic Sensitivity study does not make sense. He said he would like more time to review this report.

Robert Duval said that he believes there are issues with the drainage plan. According to his calculation, if there is a back to back storm, this would go into the wetlands. It would take 9 days for this to drain down. Common practice is 72 hours. He does not believe they are meeting the intent of the regulation.

David Drouin said that regarding outdoor storage, it should be noted that it is not just wheel barrels and bricks. He said there are petroleum products, and thinks that this discussion should be part of the impervious surface discussion. Perhaps they can reduce their total parking area and get back to 54% or perhaps reduce the outdoor storage. Mr. Drouin also asked if the size of the detention ponds has been considered since the .9 acre increase. Are these ponds still sized appropriately?

Richard Mellor said that he wanted to reiterate what the Hannaford Attorney had said. If you are talking about essential, in order to prove that this encroachment is essential, then Wal-Mart needs to look at where else they could put this building. What we are talking about for this ordinance, is the essential access. If they cannot prove it in facts, then it needs to go to Zoning Board.

A lengthy discussion ensued as it pertained to the applicability of Section 4G of the wetlands ordinance as opposed to seeking a Variance to Section 5A or other such relief through the ZBA. Hank Whitney said that to be above reproach, the Planning Board should send this to the ZBA for a variance. He said he believes this is not a permitted use. Some board members agreed while others disagreed. Mark Derby representing Hannaford's agreed with Mr. Whitney. Wal-Mart representatives had previously asked that this Planning Board uphold the decision made by the Planning Board of 2011, that this was a permitted use under 4G. A consensus of the Board was that a variance to Section 5A will be required as 4G is not a permitted use. Chairman Stenersen and Roberta Oeser were not in agreement with what the board decided.

*Kim McCummings and Burt Goodrich arrived at 8:50pm. Kim McCummings took her place at the table.*

Chairman Stenersen took a straw vote of the board as it pertained to the condition for Wastewater Treatment Plans. It was agreed that a conditional approval requiring a second public hearing upon receipt of plans would be appropriate. Kim McCummings asked the applicant to provide some sort of conceptual plans to discuss during site plan review.

Chairman Stenersen said that the Planning Board has 65 days to act upon an application. Atty. Peter Imse said that he would give the Board permission to extend this.

Chairman Stenersen made a request of Atty. Imse: that if additional information is being submitted for the next meeting, it would be most helpful to receive it prior to the day of the meeting. The Board's preference is a week prior to meeting to give them time to review the documentation.

**MOTION:** Hank Whitney moved to continue this hearing until November 5, 2013 at 7:00 PM. Roberta Oeser seconded the motion. **Vote: 7-0-0**

#### 4. NEW BUSINESS

**a. CONSIDERATION OF** an application for a Minor Site Plan Review submitted by Franklin Pierce University. The property is located at Tax Map 10, Lot 17 at University Road. The applicant is seeking approval for a baseball clubhouse.

*Withdrawn by applicant on September 30, 2013*

*Chairman Stenersen read into record TF Moran's letter of withdrawal of their application for Site Plan Review.*

#### 5. Planning Department Report

Chairman Stenersen said he had sent a memo the BOS to advise them that Mark Smith will be starting as our new Planning Director on October 15, 2013.

Chairman Stenersen said that he had sent memos to Dave Duvernay, Code Enforcement, as it pertained to the Atlas Firework signs and the Randy Burt Impact Fee request for payment plan.

Roberta Oeser said that she had some concerns with the Wetland Ordinance and would contact the LGC to clarify.

Kim McCummings said that she had volunteered to work with Ellen Smith regarding starting day activities for the new director.

#### Concerned Citizens of Rindge meeting hosted by Larry Cleveland

Burt Goodrich said that he attended this meeting this evening and thought it was essential that Kim McCummings was there. Burt said that Kim did a good job representing the Planning Board. He said that Carlotta and Dave Duvernay also attended but did not speak. Rep. John Hunt was there and

Meeting Minutes  
October 1, 2013 KS, KM, RO, HW, CE, BD, HK, BG, SH

did speak. Burt Goodrich said that this was well attended. He said his sense was that about 1/3 of those people were just finding out about what is being proposed for the 4 corners and West Rindge Village. He said they were concerned that we have received HUD grants and it was their belief that HUD money has a lot of strings attached. Burt Goodrich said that Jack Flanagan did a good job settling down what started as quite a hostile event and encouraging people to attend Planning Board meetings to express their concerns. .

Kim McCummings said that it was clear that “grant money” was a large concern and that there was some misunderstanding as to what Workforce Housing was, confusing it with Section 8 and low income housing.

Both Kim McCummings and Burt Goodrich said that the Planning Board needs to increase their efforts towards getting people to come out to the meetings and provide their input. The Planning Board will review the contracts of these grants to address the concerns heard this evening.

Economic Development Task Force Meeting in October

Burt Goodrich announced that the Economic Development Task Force will be hosting speakers from the NH Preservation Alliance for a presentation on Tuesday, October 8, 2013 from 5:00 PM to 8:00 PM at the Meetinghouse. He invited all Planning Board Members to attend.

**6. Adjourn: 9:50PM**

**Susan Hoyland  
Planning Secretary**