

**PLANNING BOARD
RINDGE, NEW HAMPSHIRE
July 19, 2005**

DATE: July 19, 2005 TYPE: Public Hearing DATE APPROVED: 08/02/05
TIME: 7:00-9:30 PM. James Hoard

CALL TO ORDER, at 7:00 PM

ROLL CALL: James Hoard, Dr. Jerry Parker, Arthur Fiorelli, Dick Isakson Keith Halloran, Dick Isakson, Doug Gutteridge, Tom Coneys, Roberta Oeser, Robyn Payson, Jo Anne Carr

APPOINTMENT OF ALTERNATES: Dick Isakson for Dave Tower Doug Gutteridge for Craig Cypret

Review of Meeting Minutes

- Minutes 07/5/05 Public Hearing, Motion to accept Tom Coneys Dick Isakson 2nd minutes approved unanimously.

Announcements-

Jo Anne stated that she has not received any response from Chris Asaff regarding the scope of services being covered in the Traffic Study for the Phase 10 project. The study cannot begin without an escrow account or approval from James as Chair to proceed. The project is on hold until this is resolved. James said he had not heard anything from Mr. Asaff.

OLD BUSINESS

Art Fiorelli read a letter into the record referencing the Planning Board Meetings of June 21, 2005 and July 5, 2005. The subjects of the letter were as follows:

- The appointment of Tom Coneys to the position of Planning Board Member from that of Alternate without all regular Planning Board members present.
- The impromptu discussion of the Phase 10 Sonja Dr. project with Chris Asaff of Navian Development on July 5, 2005.

The letter in its entirety is included following the minutes.

Dr Parker stated that he left the June 21, meeting with the understanding that the appointment to fill the open position on the Planning Board would not be made without a full board present. Knowing that, he scheduled an appointment in Washington DC for medical follow up assuming there would be no vote with at least one member missing. He felt that the delay would not be that significant. Upon returning, he was dismayed to find out that a vote had in fact, taken place. Dr. Parker went on to say that his only request in the future would be we try to agree to a level playing field so that all the members know what was happening so that they can make proper plans.

Roberta Oeser pointed out that there was not a full board at this meeting this evening either, which was why they said they would have to vote. This being summer, it may be difficult to have a full board. She said that she tabled the motion and it was her decision to table the motion on the 21st and she removed from the table on July 5th.

Art Fiorelli responded by saying there was no notice posted on this subject which is legally required, secondly there was no "motion" that was tabled. Thirdly, alternates are not allowed to

vote on the replacement of a regular member. The Ex-officio alternate or any other alternate does not vote. The fact that two people are not present this meeting does not change a thing. The point is any fair minded person listening to that tape from June 21, would agree that the intention of delaying the vote was to wait for all 6 regular members of the Board to be present. It was politically convenient for those who moved otherwise to have the vote on July 5.

NEW BUSINESS

Application for Major Subdivision

Map 12 Lot 3-6-3 Old New Ipswich Rd.

Isaac Traffie

This proposal is for an eight-lot subdivision in the Residential District on Old New Ipswich Road (near the New Ipswich town line). The subdivision will be on a new road, which would come off Old New Ipswich Road, of approximately 1200 feet in length ending in a cul de sac. The applicant came before the Board on May 3, 2005 for a preliminary conceptual review. At that time the Board raised questions regarding the additional burden of 7 new houses on that section of road and the extent of road upgrades which may be required

Jo Anne Carr informed the Board of the Road Committee's determination that this project would require substantial road upgrades beginning at the second gate to Rindge Stone and Gravel 1.1 miles to the New Ipswich town line.

Art Fiorelli said that there is nothing in the Subdivision Regulations that says any portion of road upgrades for a subdivision should be born by the tax payers of the Town. They are not benefiting financially from the project, when the developer is. There are no immediate plans for the Town to upgrade Old New Ipswich Road, so this project seems Premature due to the condition of the road. Tom Coneys also said that this development appeared to be Premature.

Dick Isakson suggested that Mr. Traffie have the road engineered, find out what an upgrade to the road will cost.

Frank Lupis-a 14 year resident of Old New Ipswich Rd., said that the road is in horrid condition and was not in favor of having the cost of upgrading the road come out of his pocket

Marsha Breckridge-asked if Conservation has looked at the site of the proposed subdivision because there are a lot of wetlands. She also said that she strenuously objected to this project because of the effect on the quality of life it will have on the neighborhood and the impact on the school system. She also objected to having her tax dollars pay for upgrading the road.

Jean Benson- Stated that she agreed with Ms. Breckridge and Mr. Lupis.

Bob Dogherty –said he believed that a person should be able to do whatever the law allows they can do with their land. He thinks the road is in bad condition and the Town should be repairing the road anyway he thinks that the Town should be partially responsible for paying for the road upgrade.

Randy Baragdon of Souhegan Valley Engineering suggested that the applicant contribute funds toward the eventual upgrade of the road without having to pay surveying and improving the road entirely.

Art Fiorelli said that right now there was no money allocated to improve Old New Ipswich Road. If this project had not come before the Planning Board, they would not be talking about surveying and improving the road. The Roadway Committee was created by the Board of Selectmen to recommend what roads needed to be upgraded first but at this time there is no money allocated to upgrade Old New Ipswich Rd.

Jo Anne said that given that there is no plan currently for the town to upgrade the road. If the developer wanted to move forward with this project, they would have to pay for the engineering work to determine the extent of the upgrades necessary. Then it would have to be portioned out for the developer's responsibility. The 6 year CIP plan shows nothing about upgrading this road. She also noted Subdivision Standards Appendix A Section 2 F, which stipulated the standards by which roads shall be improved and the responsibility of the Planning Board to assure the road is brought to Town Standard.

Dr. Parker said that the biggest issue was the road and if this development could be built without undue risk to the public. Dr Parker made a motion, for the developer to return to the Board with recommendations from the Rindge Highway Department, Rindge Road Committee and a Traffic Engineer selected by the Town, and paid for the developer, to determine the impact of this development on Old New Ipswich Rd. The Board needs to know whether this development will pose an undue risk to the public. If it does, there need to be recommendations made for what steps must be take to alleviate that risk. Art Fiorelli 2nd Motion passed unanimously.

Dr. Parker also said the Board needed to make a site visit. Mr Traffie was instructed to work with Jo Anne Carr, and submit a full set of plans in compliance with the Rindge Subdivision Regulations prior to his next hearing

CONTINUANCE

Application for Major Site Plan:-Parking Lot Map 10 Lot 17 Mountain Rd.

Franklin Pierce College

Jeff Kevan of TF Moran presented the updated plan for the parking lot at Franklin Pierce College on Mountain Road and Old Kimball Rd. Conservation Easement has been recorded. Jo Anne said that she found it recorded on the Plan, but could not find the Easement language. It is important because it was also a condition on the Athletic Field approval as these site plans are linked, even though they were separate applications. Regarding the access crossing, the Conservation Commission gave the opinion that there was no need for any Zoning action. The Wetlands Permit has been applied for.

Art Fiorelli asked about drainage and the possible transference of phosphates to the lake. Mr. Kevan described the drainage system and noted that the drainage plan is consistent with the approved drainage plan for the Athletic Fields.

Dick Isakson asked about erosion control measures. Mr. Kevan stated that during construction, silt fence and erosion control matting will be used. Jo Anne said that per the Administrative

Conditions, stabilization of slopes immediately and that erosion and sedimentation control measures remain in place until the slopes are stabilized.

Mr. Kevan presented detailed lighting plan showing a 14' high 100-watt decorative light fixture, as well as a plan representing the intensity of light from each pole. All fixtures will have shields directing the light downward to prevent light pollution.

In other matters, Mr. Kevan gave the board the schedule for the use of the Athletic Fields showing the evening hours of operation requested by the Board. The schedule runs from late August – October and no later than 8:00pm at night. He went on to say that the lights on the front of the Town Houses create more of a problem than campus lighting. Art Fiorelli suggested the possibility of timers being installed. Jo Anne suggested that as the landscaping plan for the Town Houses has not yet been finalized. Shielding the light could be a consideration in the landscape design. Dick Isakson asked about the status of completion of the construction of the Boat-House. Mr. Kevan said it was anticipated that construction should begin shortly.

There was a safety concern expressed about cars parking in a gravel area North East of the Parking Lot. It was suggested that this be blocked.

Dr. Jerry Parker moved to accept the plan, Art Fiorelli 2nd. The plan was accepted unanimously. Art Fiorelli made a motion to approve the plan with the following conditions:

- Snow Storage area on the Site Plan.
- No salt be used for ice control.
- The North East Area above the parking lot be obstructed to prevent parking.

Dick Isakson made a motion to amend the motion adding the following two conditions:

- Approval of the wetlands permit
- Recording of the Easement Language.

Art Fiorelli 2nd. The amendment to the motion was accepted unanimously.

The plan was approved with the above conditions unanimously.

WORK SESSION

Discussion of Workshop Series

Jo Anne updated the Board on The Workshop Series Schedule:

Road Standards-Jeff Porter from SWRP Tuesday Sept, 20

Driveway Regulations-Robyn is putting notes together about some driveway issues. We would like to begin discussion August 2.

Water Resource Protection -Paul Suska available August 23,

Wildlife Habitat Inventory-Co-sponsored with the Conservation Commission-October

Rural By Design- with Randall Arendt-November

Motion to adjourn Dr. Jerry Parker, Roberta Oeser 2nd

Meeting Adjourned 9:30pm

NEXT MEETING

July 26, 2005

Respectfully submitted,

Robyn Payson

TO: James Hoard, Chm., Rindge Planning Board

FROM: Arthur C. Fiorelli

SUBJECT: Planning Board Meetings of June 21, 2005 and July 5, 2005

CC: Rindge Planning Board

DATE: July 19, 2005

Jim—As you know, I was absent from the July 5, 2005 PB meeting, due to an intestinal flu and a fever of over 102 Degrees F. However, I have listened to the tape of the July 5 meeting, as well as the tape of the beginning of the June 21 meeting, and have the following comments and suggestions that I would like entered into the records of the July 19, 2005 meeting.

Planning Board Vacancy Created by the Resignation of Katie Duffy

The regular PB members present at the June 21 meeting were you, me, Dr. Parker, Roberta Oeser and Dave Tower. When the subject of Duffy's replacement came up, you are quoted on the tape as follows: "I would kind of suggest that since the entire Board isn't here and it's an important issue, maybe we should hold off for one more meeting just to give everybody a chance to have a say on this....(at this point, I am heard on the tape to say, "I agree").....let's hold off and give everybody an equal opportunity...." At this point, Roberta interrupted you and so moved. The Board members present voted unanimously for the motion. The only regular Board member not present was Craig Cypret.

I view your suggestion and the Board's vote as a commitment to have all regular Board members voting on this important issue. In my opinion, that motion established in effect a de facto policy that the Board would not vote on this issue until all regular Board members were present. That was certainly the intent of the motion, and certainly my intent in voting for it.

In addition, the subject of the Planning Board vacancy was not on the agenda of the July 5 meeting. I can assure you that if it were, given the importance of this issue, I would have attended at least the first portion of the meeting, even with the fever I had. I would have had the opportunity to contribute to the discussion, and hear the input of other members of the Planning Board, before making a decision on the appointment. Since it was not on the posted agenda, neither I nor members of the public were properly notified of the meeting. I would refer you to RSA Chapter 91-A and our own Planning Board Rules of Procedure, which require proper preparation, and therefore posting, of a complete agenda, not only portions of an agenda. Quoting from RSA 91-A:1, "Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." I believe that through your actions on this issue, you violated not only the intent of that RSA and our own Rules of Procedure, but also the trust that the entire Board had placed in you by voting as we did, unanimously, on your own suggestion at the June 21 meeting to postpone the discussion on this issue until such time as all regular members of the Board were present.

During the discussion at the July 5 meeting on whether or not to proceed with this issue or postpone it with proper notice to the July 19 meeting, Roberta Oeser suggested that since Robyn Payson was appointed by the Selectmen to be the ex-officio alternate, she was representing my views on the issue. At the Selectmen's meeting of April 20, 2005, the issue of individual Selectmen representing the views of the Board of Selectmen on various committees was discussed. Roberta was at that meeting. We concluded that this violated the principle of independent judgment based on testimony and other evidence presented on any particular issue or application at the meeting and time at which the decision is made by any board, committee, etc. There is significant case law in New Hampshire that addresses this subject. There is a very great difference between having personal opinions on any subject based on an individual's past experience or knowledge he or she may have, and having prejudged a case or an issue even before it is discussed in an open, public meeting. If the latter is proven, the decision made by the entire board can be challenged. To suggest that Robyn could represent my views or the views of the Board of Selectmen on Katie Duffy's replacement would violate the principle of independent judgment arrived at through an open discussion of the issue. In any case, alternates do not vote on appointments of candidates for an open regular member position, and the alternates should not even have participated in the discussion on this issue.

At the July 5 meeting, when Dave Tower suggested and made a motion that the decision to appoint be postponed until July 19, with advance notice to all regular members that a vote would be taken at that meeting, the vote was a tie and the motion failed. Dave, Robyn Payson and Tom Coneys, who was also seated as an alternate, voted in favor, and you, Roberta Oeser and Craig Cypret voted against. To Tom Coneys' great credit, even though his position on the Planning Board could be affected, he voted to wait for full Board representation, and even stated that he felt uncomfortable being involved in the discussion.

Let me say that I think Tom will make a very fine Planning Board member, and I admire him for having taken what I believe was the appropriate position on this issue. Although I believe the arguments made by Dave Tower and Robyn Payson at the July 5 meeting concerning Dick Isakson have great merit, I do not plan to challenge Tom Coneys' appointment, even though I believe there are sufficient grounds to do so. The trust that was placed in you at the June 21 meeting was violated, in my opinion. This is important, because any board, committee, etc., has to operate in part on the basis of the trust between its members to do what they say and believe. Words are important, commitments are important, and when they are broken, as I believe they were in this case, it undermines the functioning of a board.

Navian Development Informal Discussion at the end of the July 5 Meeting

First of all, this subject was not on the agenda either. This is the second time that Chris Asaff has been allowed to address the Board without any notice given to Board members or the public. One of the Board members, Dave Tower, had left the meeting, and perhaps would have remained had he known this subject was to be discussed. What started out as supposedly an informal discussion turned into a motion at the end to reaffirm a previous decision concerning the approval of the site plan for the Phase 10 project, a motion made moot by the fact that this subject was not properly noticed on the agenda and posting of the July 5 meeting. Please refer to RSA Chapter 91-A and our own Rules of Procedure again.

Listening to the tape of this portion of the meeting, there were several observations that I would like to pass on to the Board and you, leading I hope, to actions that could result in greatly improved meetings. In a few instances, Board members were confused as to what the purpose of Asaff's presentation was. Listening to the tape, I can understand why. Asaff started by presenting the traffic study on the Dunkin Donuts site, which he had previously refused to give the Planning Board. He then inquired as to whether or not a site plan review would be required to make the changes to the Dunkin Donuts site suggested by his traffic engineer. From there, the discussion went to the subject of the Phase 10 approval, the ZBA appeal, the wetlands crossing to the most northern lot, whether or not another legally posted hearing, with abutters notified, was required for the Phase 10 project, and finally a motion reaffirming the approval of the Phase 10 project with the relocated, most southerly office building.

Jo Anne Carr cautioned a few times that this was the first she knew that Asaff would come before the Board. She was not prepared to comment on the traffic study, and the Planning Board began discussing the details of this study, even though this subject was not properly noticed. Jo Anne also cautioned that there obviously had not been time to determine whether or not what was being proposed as a solution to the traffic safety issue on the Dunkin Donuts site would solve the problem.

Throughout this discussion, the tape demonstrates clearly that Asaff frequently interrupted Planning Board members and Jo Anne Carr. It was very difficult to get the gist of much that was said, at least on the tape, due primarily to these interruptions. I can understand why some members of the Board were confused. Also, at one point, the Chairman recognized a member of the audience and as she started to speak, members of the Planning Board were engaged in conversations at the meeting table that, at least on the tape, made it impossible for me to hear what she was saying. The Board members finally stopped their conversations, and the speaker could then be heard.

Chris Asaff also asked if a developer could request peer review by an independent third party, to be paid for by the developer, at the beginning of the approval process to save time and money. He asked if the Planning Board had used any firm for this purpose in the past, and was told we had but for specific studies. I think his idea has merit, and I would suggest we consider it. It could save both the developer and the Planning Board time and the developer money in the long run.

Recommendations

As a result of all of the above and other factors, I would like to make some recommendations for the Board's consideration, to avoid what I think are some major problems with our current modus operandi:

1. At our next meeting, appoint an alternate to replace Tom Coneys' alternate position, and appoint a Vice Chairman, with proper notification to Board members and the public.
2. Include in our Rules of Procedure definitions of what must appear on posted notices of the Planning Board meetings, both full Board and Sub-Committee meetings.

3. The Chair should make every effort to control the conduct of meetings, treating ALL members of the Board, applicants and audience fairly and equitably; recognizing ALL who wish to speak on an issue; and allowing them to address the Board uninterrupted by others.
4. Review the responsibilities of the Planning Director relative to preliminary review and recommendations to developers prior to placement on the Planning Board meeting agenda, and modify if necessary.
5. Define and include in our Rules of Procedure the method to be used to appoint alternates when regular members are absent or must exclude themselves from a case.
6. Consider and decide on Chris Asaff's recommendation to have a proposed project reviewed by an independent third party prior to submittal to the Planning Board.