

**PLANNING BOARD
RINDGE, NEW HAMPSHIRE
December 18, 2007**

DATE: December 18, 2007 TYPE: Work Meeting DATE APPROVED: 2/05/08

TIME: 7:00 PM-PM CHAIR Deb Sawyer until Kim McCummings arrived

CALL TO ORDER, at 7:00 PM

ROLL CALL MEMBERS: Deb Sawyer, Roberta Oeser

ROLL CALL ALTERNATES: Art Fiorelli, Dick Isakson, Keith Halloran

EX OFFICIO Tim Halliday

PLANNING DIRECTOR Jane Pitt

PLANNING ASSISTANT:

Alternates appointed:

Art Fiorelli for Dave Tower Keith Halloran for John Vorfeld and Dick Isakson in the empty seat.

Phantom Fireworks-Update

Jane announced to the Board that the applicant has submitted the sign design and a revised set of plans showing more clearly the existing conditions of the site, and showing what will happen as the site is developed.

Letters and aerial images have been submitted by SVE Associates and were distributed to the Board.

Jane reviewed the two outstanding wetlands issues on this application which were:

1. Section VI of the Wetlands Ordinance, which states:
 - a) Tree cutting is limited to 50 percent of the basal area of trees and 50 percent of the total number of saplings or shrubs in a 20year period. A healthy well distributed stand of trees, saplings, shrubs, and ground covers must be maintained. Stumps and their root systems must remain intact in the ground within 50 feet of the high water mark of surface waters or wetlands.

The question was how to determine how this site is impacted by this provision. The Planning Office researched when this provision came into affect and determined it was in 2000. Jane said that her position on the matter was, if there had been no cutting on the property after 1999, then it would be “grandfathered”. This issue discussed by Jane, Code Enforcement Officer Dave Duvernay and DES concurred that someone coming in to develop a property that had been cut prior to the 2000 ordinance change had a “clean slate”. Jane went on to say that Richard Mellor had e-mailed her and told her that he had taken a look at the site in question with Mr. Duffy and determined that this particular location had not been cut after 2000.

2. The second issue dealt with the provision in Section I of the Wetland Ordinance in the Introduction pertaining to “an area of minimal disturbance”. Jane put the question to Town Counsel Beth Fernald, and her legal opinion is that there is nothing in the ordinance that defines the “area of minimal disturbance”. There is nothing in the ordinance that defines it as a 150 foot buffer and sets forth what can or cannot be done inside it. Therefore it is not enforceable.

Jane said that Beth also concurred with the opinion on the “grandfathering” of the cutting on the site.

The Planning Board reviewed the designs for the wall mounted and ground mounted signs. Following which, Arthur Einzig and Board engaged in a discussion about the lighting of the sign.

Roberta Oeser made a motion to accept the application. Art Fiorelli seconded the motion. The motion carried unanimously.

Roberta Oeser made a motion to continue until January 3rd in the Selectman's Meeting Room at 7:30pm unless otherwise posted. Art Fiorelli seconded the motion. The motion carried with one abstention by Deb Sawyer

Art Fiorelli suggested the board schedule a site walk at the Phantom Fireworks Site. Following discussion Roberta Oeser made a motion to hold a Site walk January 3rd at 3:00pm-4:00pm at the end of Sears Drive. Art Fiorelli seconded the motion. The motion carried with one abstention by Deb Sawyer

Kim McCummings arrived at the meeting.

Hydro Geological Assessment Update

Rob Faulkner at Clough Harbor said that reviewing the Hydro Geological Assessment would cost about \$500.00 without meetings.

Judy Cypret said that she was under the impression that this review was going to be under way as of the last meeting. She was confused when she found out that it had not yet occurred as they hoped this would be complete before they left town.

Kim said that the turn around should be a week and Jane will contact them as soon as the information comes in.

Les Cypret said that he was frustrated at the time and money this has cost him.

Kim said that unfortunately, this was the first time that the issue had come up and there was no "process" in place.

Roberta Oeser asked if Jane had contacted DES about HTE.

She said she did and checked with Clough Harbor who said they were reputable. They are licensed with the state of New Hampshire and are a large firm.

Roberta asked if the Board would recognize them as professional hydrologists. If the Board recognizes HTE professional and qualified to do this work then the Board has to accept their findings. If the Board wants a third party review, the cost shouldn't fall on the land owners.

Kim said that this was discussed at the prior meeting the consensus was that the Board should not carry that expense.

Roberta said this is not a Site Plan Review and the Ordinance is clear. If the Board recognizes HTE as a qualified hydrologist, the Board can't ask the Cypret's to pay for another one.

Judy Cypret said there was nothing in the Ordinance that said that they had to come to the Planning Board first and that she had called Robyn Payson to ask for a copy of the Aquifer

Protection Ordinance, as well as names of hydrologists. Robyn said the only firms that had dealt with wetlands issues that she could think of were Clough Harbor and Normandeau Associates. So the Cypret's went in search of a hydrologist. Judy expressed her frustration at the lack of a procedure to follow which is resulting in costing them time and money.

Art Fiorelli said that he felt the Ordinance was clear about the firm being acceptable to the Planning Board. He asked Judy if she had come back to Robyn to ask her if HTE would be acceptable to the Planning Board.

Judy said she did not.

Art said that Robyn could not answer the question if it was not asked.

Kim said that there is a lack of clarity in the Ordinance and there is frustration on both sides. She asked Jane to put developing a process for someone who contests his or her property being located in the Aquifer Protection District.

Keith Halloran said he did not think anything was intentionally violated, however, the Board needed to be part of deciding who would be ultimately selected and on what basis. The Board was not involved in reviewing the proposal and all that is presented is the final report. A step was skipped, so a third party review is a way of doing what we wanted to do in the first place. Having said that, given the fact there is a lack of clarity and the lack of precedent he did not know why the Board could not split the cost down the middle as an act of good faith. The Cypret's acted inadvertently and the Board did not have a clear process and it gives the board an incentive not to get into this position again.

Dick Isakson asked what was going to come out of this third party review.

Jane said that the analysis will not be doing any physical work on the site. It will review the data, results and the conclusions.

Roberta said that the thing that needs to be kept in mind is, we need to find out if test pit 5 shows an aquifer, which type it shows. Our ordinance only protects Medium and High Yield Aquifers.

Roberta made a motion to send the HTE report out for third party review with the Planning Board splitting the cost with the Cypret's and specifically asking whether site 5 is Medium or High Yield Aquifer. Keith Halloran seconded the motion

Keith suggested that Roberta amend her motion to say that this is intended to be applicable to this matter only. We are dealing with a lack of clearly defined procedure as well as recognition that the applicant unwittingly did not completely follow what we interpret the guideline to be so it cannot be resurrected in another situation.

Kim said that setting a precedent was her concern. Because there will be more "firsts" and every time will be unique and will not be intentional. Is this the approach the Planning Board is going to take every time? The next person coming up in a similar circumstance is going to expect the cost to be split.

Dick Isakson said he did not feel that precedents should be set.

Roberta said that all that needs to be done is get a list of hydro-geologists that are acceptable.

Keith Halloran said that doesn't address reviewing the proposal.

Roberta said if the Board determines HTE or Clough Harbor or Brown Engineering is acceptable, then they are acceptable.

Art said no, because people make mistakes. The Planning Director can look at the proposal can possibly point out some errors. He also asked what will happen if the Planning Board agrees to pay half and the Clough Harbor review comes back and says that there needs to be more test pits dug.

Deb Sawyer suggested contacting Town Counsel before offering to pay for anything.

Keith Halloran withdrew his second.

Roberta's motion died for lack of a second.

Roberta Oeser said that every property is different and every case that comes before the Board is unique, one decision does not create a precedent it does not create administrative gloss it does not create a recurring situation.

Dick Isakson made a motion to continue this to the meeting of January 3, 2008. The Hydro Geological study will be sent out to Clough Harbor for review and the cost of \$500.00 will be paid by the applicant. Art Fiorelli seconded the motion. Motion carried with Roberta Oeser voting No.

Kim said that the Cypret's would be referred to as the "applicants" for lack of a better term and asked Jane to make a note to include in the agenda that the applicant consult with the Board before engaging anyone to perform any surveys.

Subcommittee Updates

Roberta Oeser proposed changes to the zoning map on behalf of the Zoning Subcommittee. The Planning Board's first Public Hearing on Zoning Changes is to be held December 27, 2007 and there is not enough time to properly notify the public about any new Zoning for the Warrant.

Art said that it was inappropriate to even be discussing this in light of the fact it was not on the agenda.

Keith Halloran made a motion that all three subcommittees present in writing and under signature their recommendations to the full board putting on the agenda their recommendations to the Board and the public. Art Fiorelli seconded the motion. The motion carried with Roberta abstaining.

Sign Committee

Roberta said that the Sign Ordinance could have been ready to go forward with minor changes and she was very disappointed that it wasn't.

Economic Development Committee Update

Jane attended the EDC meeting and informed the Board of projects intended to help encourage new businesses. There is an inventory of Industrial and Commercial properties being compiled. There is also a guide being developed for people interested in developing land.

Hearing Schedule for Citizen Petitions

The Board discussed the procedures for the Public Hearing for citizen's petition.
The hearing for the Citizen Petitions will be posted for January 15, 2007

Meeting Adjourned

NEXT MEETING

December 27, 2007

Respectfully submitted,
Robyn Payson