

Planning Board Minutes 05/17/11

NEWMARKET PLANNING BOARD MEETING MAY 17, 2011 MINUTES

Present: Chairman Badger (Chairman), Peter Roy (outgoing Vice Chairman), Valerie Shelton (incoming Vice Chairman), Janice Rosa, Justin Normand, Elizabeth Dudley

Absent: Eric Botterman (Town Council ex officio), Adam Schroadter (Alternate)

Agenda Item #1 – Pledge of Allegiance

Before the start of the rest of the meeting, Chairman Badger welcomed the new Board members, Justin Normand and Elizabeth Dudley, who are now full Board members after serving as Alternates, and Val Shelton, who was re-elected to the Board. He also acknowledged the work of former Board members George Willant and Rick McMenimen. The Board appreciates their work, hard efforts, and contributions to the success of this Board.

Agenda Item #2 – Public Comments

Stuart Wucher, 13 North Main Street, had comments on the proposed shopping center. Chairman Badger explained this portion of the meeting was for non-agenda items.

Agenda Item #3 – Review and approval of minutes: 04/12/11

Peter Roy stated he was listed as present at that meeting, when he had been absent.

Val Shelton clarified her comment, on page 4, line 26, should state “Val Shelton asked if the requirements for site plan acceptance have been met.”

Action

Motion: Chairman Badger made a motion to accept the minutes

Second: Janice Rosa

Vote: Peter Roy abstained due to absence

All others in favor

Agenda Item #4 – Regular Business

Election of Chairman and Vice Chairman

Janice Rosa nominated John Badger for Chairman. There were no other nominations.

Action

Motion: Janice Rosa made a motion to elect John Badger as Chairman

Second: Val Shelton

Vote: All in favor

Peter Roy nominated Val Shelton for Vice Chairman. There were no other nominations.

Action

Motion: Peter Roy made a motion to elect Val Shelton as Vice Chairman

Second: Elizabeth Dudley

Vote: Val Shelton abstained

All others in favor

Solon Realty Co, LLC - 438 Wadleigh Falls Road, Tax Map R6, Lot 50, B3 Zone, Site Plan Review to revise the existing site plan to allow the storage of containers & trailers in the limits of the gravel area and allow containers in the previously delineated container area. Also requested is to allow an old office trailer to be used as a warming hut for the workers who move the containers. They are also requesting the storage of fourteen ice cream trucks on site, which will be used from the site during the season and stored there off-season. This use would include a dumpster on the site. The owner would also like to include the storage of snow removing equipment to include a loader & bulldozer onsite year round. This site plan also includes additional screening from the roadway.

Tobin Farwell, Farwell Engineering Service, represented the applicant. He stated the Technical Review Committee (TRC) met on May 4, 2011 and reviewed comments from Rockingham County Conservation District (RCCD). He stated the remaining issue is the RCCD wants an engineering review of drainage of the site. The applicant is only proposing a ice cream truck parking area and area for re-fueling and employee parking. For the ice cream truck area, there will be a catchment that flows to a basin with a smart sponge. Vehicles that move the containers onsite and the snow removal equipment would need refueling and it was brought to his attention that needs to be done on an impervious surface. A cost estimate for RCCD to do the review has been forwarded to the Planning Department. RCCD was also looking for an extensive drainage analysis. He did not think that was the intent of the TRC. Usually a drainage study is done for a subdivision or large commercial site, where you are changing the amount of impervious surface area. He felt that was not the situation here. What they are trying to do is, if there is an incidental oil spill, they want to protect the groundwater with an impervious surface for the ice cream trucks that flows to the catch basin. He spoke to the owner, James Daley, and then spoke to Diane Hardy to see if they could have further discussion with the Planning Board on this matter. RCCD feels a drainage analysis should be required. He stated they were not trying to balance pre and post development flows. RCCD also wants high intensity soils mapping done prior to a drainage analysis. He felt this is not what was recommended by the TRC. He would like to discuss with the Planning Board what they want to see reviewed by the RCCD. He stated he has also proposed putting pans of 110% gas tank capacity under the ice cream trucks for long-term

off season storage to collect any oil or petroleum spills. He stated that they are in a Catch-22 situation, where, the more they have to pave, the more they are going over the 2,500 square foot impervious pavement requirement calling for a drainage analysis. They would be happy to do something other than impervious surface, such as hard packed gravel or they could look at ways of refueling offsite. He is looking for input from the Board regarding the RCCD's recommendations.

Diane Hardy stated they have a memo from Lenny Lord, from the RCCD. When Mr. Daley and Mr. Farwell contacted her about the confusion, she emailed Mr. Lord to clarify the level of review. Mr. Lord stated that the drainage study was not just to establish pre and post development flows, but also to establish whether there is adequate groundwater protection, this site is in the aquifer protection area. The RCCD feels there should be a more detailed review of site drainage. The other concern is the refueling area and, under the Town's regulations, it does require approval from the Town Engineer. Diane Hardy stated it was her hope that there may be some middle ground reached where there would not be a lot of additional costs for a full drainage study or delays related to further engineering and plan reviews.

There was discussion of the refueling area. Chairman Badger stated he thought, from the TRC meeting, that refueling would be prohibited. Tobin Farwell stated that it was required to be done onsite the impervious surface would have to be reviewed and approved by the Town Engineer. He clarified that they were not refueling the ice cream trucks onsite.

Chairman Badger stated the three issues are: the refueling of the container moving and the snow removal vehicles, the drainage issue with RCCD and their recommendations, and the septic system. Val Shelton read the section of the Zoning Ordinance regarding refueling and having an impervious surface. She stated, it was her understanding that a note would be put on the plan that this area would conform to Section 5.01(B)(7)(e). Tobin Farwell stated he was willing to put the note on the plan and have it state the Town Engineer would review. Val Shelton stated a condition of approval should be that it has to be approved by the Town Engineer.

Tobin Farwell stated the performance standards section of the memo mention potential contamination to the groundwater. Diane Hardy stated when she and Tobin Farwell had spoken earlier in the week, they discussed the need for information to justify the size of the catch basin and that she understood that was something that could be provided without a detailed drainage analysis of the entire site. Tobin Farwell clarified that the groundwater table is very close to the surface. Under normal design standards, you want to have a leaching catch basin that is four to six feet deep in the ground and you want two foot separations between the bottom of the basin and the seasonal high water table. That is not going to be the case in this situation. They are not going to have two feet at the highest water time of the year. He is relying on the smart sponges to absorb any contamination. If there is any incidental spill, the workers will use Speedy Dry and equipment to clean it up and dispose of it properly. Another situation is if a vehicle leaked oil overnight and it rained and the oil was brought to the catch basin. That is when it would become trapped in the smart sponge. He stated the catch basin will fill up and flow onto the ground. He stated he was not sure what RCCD was looking for way of capacity.

Val Shelton suggested everyone stay on one topic at a time. Right now the question revolves around refueling. The applicant can get an idea of where the Board is at and then we can see if the applicant is agreeable to that. Chairman Badger stated that applicant agreed to add the note about refueling. Val Shelton stated that applicant had responded with an issue with the Town Engineer's review. Tobin Farwell stated the Town Engineer (RCCD) had written that the evaluation would be included in their review, after going on for paragraphs about the drainage calculations and need for mapping. His concern is the Town Engineer (RCCD) is counting on the drainage calculation to be part of this. In his mind, the drainage and impervious surface all has to be done and that, as part of that review, there will be a review of the refueling impervious area. Tobin Farwell questioned what the RCCD engineer would do for a review? The regulations say refueling should be done on an impervious surface. Asphalt is an impervious surface. Val Shelton stated it said "or other facility to be approved by the Town Engineer" to mitigate the spread of any unforeseen spills. Tobin Farwell stated, as long as that does not include a drainage analysis, he was in favor of that review. James Daley stated he would pour a concrete slab big enough to park a vehicle on top of for refueling. Val Shelton stated, if that was okay with the Town Engineer, she would say that might be okay with the Planning Board.

There was discussion clarifying that the only vehicles being refueled were the snow removal vehicles and the vehicles that move the trailers.

Elizabeth Dudley asked about the maintenance of the smart sponges. Diane Hardy stated there would be a condition, which was recommended by the Conservation Commission, regarding the maintenance schedule for the smart sponge. Chairman Badger explained this technology has been before the Planning Board in the past and is accepted technology.

The Board then moved on to the issue of the septic system. Tobin Farwell stated that the NH DES approval number is designated on the plan. It is designed for 300 gallons per day. It has been approved by NHDES. Even with the additional projected flows, the total demand will come in well below 300 gallons per day.

The next issue was the drainage. Val Shelton read from the ordinance that the design and construction of any drainage facility shall be approved by the Public Works Department and/or designated Town Engineer. Chairman Badger stated that could be a condition of approval. Val Shelton stated it is at our discretion if the Board wants that design and construction of that facility to meet certain design standards. Diane Hardy stated that was correct. Val Shelton read the remainder of that section of the ordinance. Chairman Badger summarized that, if RCCD approves the design, the Board has discretion on this issue. Val Shelton stated, the way she reads it, the Board has discretion on the requirement of site drainage.

Val Shelton stated she would like to hear from the applicant what their reason would be for the Planning Board to not require this. Tobin Farwell stated usually a drainage analysis is done to balance pre and post development flows. The applicant is not expanding out beyond the footprint that is there now. If you were making a large parking lot, you are getting into swales and detention basins, etc. That is not what is happening here. They are proposing a very small area of impervious surface that is taking the place of an existing packed gravel area. That negates the requirement of a drainage analysis to determine things like flow volumes. What they are looking at is if the water flows into this smart sponge. Elizabeth Dudley stated this is in an Aquifer Protection District and she thought it should be considered. She stated the Board's role is to protect the water. She was concerned if this was an appropriate use of the land considering its proximity to the aquifer, in terms of expanding its current use. Chairman Badger stated the direction the applicant is going in goes well beyond the original approvals that were done a year or two ago. As long as the applicant is ready to comply with regulations and conditions, he is allowed to expand. These are permitted uses in this zone. Elizabeth Dudley stated there is a feeling that this has not been approached by the applicant in a straightforward manner, as to how these particular changes have come about.

Chairman Badger stated one thing they talked about at the TRC meeting was the owner of the ice cream trucks had agreed to register them in Newmarket, NH. He asked James Daley if he had a date for that to occur. James Daley stated the only way the ice cream trucks' owner could do that was if he changed his corporate headquarters to Newmarket. Right now they are in Merrimack. When he moves he will register thirty three trucks here, when he's only storing fourteen here. He stated that will happen the day after they get their approvals. James Daley stated the truck owner tried to register them here in Newmarket, but when he came to the Town Hall they told him he could not do it, because when you look it up the corporation's address was in Merrimack. He will change that and, on the eighth month, he will register them here.

Diane Hardy stated she would like to get some clarification whether the practical aspects of looking at the drainage structures and the surface that will be provided for the refueling could be looked at by an engineer without doing the full fledged drainage study. This is typically a TRC issue, worked out at those meetings. The Board could invite the engineer from RCCD to attend a meeting of the TRC to sort out this issue. James Daley stated, to put the concrete and drains in, it will cost well over \$25,000. They are not changing the site at all other than putting these drains and slab in. He stated the end does not justify the means. He is trying to run a business in town and comply. He stated he has spent a lot of money out there trying to do everything right and has been very cooperative, but he can only go so far.

Elizabeth Dudley asked the applicant to address the rip rap line ditch leading from the parking area. Tobin Farwell stated they proposed to put in six inch diameter rip rap ditch. This will be more than sufficient for that area. He stated if RCCD reviews and approves it, they may require a high intensity soil survey. He stated what he has proposed is much looser, but he has gone beyond to make sure that it works.

Val Shelton asked if the RCCD commented on why they did not want to limit their review to just what the TRC was looking for, which really was the ice cream truck storage area and re-fueling area. Diane Hardy stated RCCD felt the entire gravel area on site that was compacted should be considered in the overall drainage analysis because it will effect the drainage calculations.

Tobin Farwell spoke on how the concrete pad would be installed and stated that it would be slightly elevated, so it would not received other site drainage.

Val Shelton stated the TRC's intent was looking for RCCD to analyze the ice cream truck area relative to capturing and treating, through the proposed drainage /smart sponge facility, any oil spills or runoff from the storage of these vehicles.

Chairman Badger asked the Board if they felt prepared to move forward with a conditional approval. Each member said yes.

Chairman Badger went over some notes he had made at the TRC meeting, which may be potential conditions.

Show on the plan hydric B soils within the wetland protection area.

A note on the plan that this property is not allowed for agricultural and forestry.

Change the use from empty trailers to temporary loaded trailers with non hazardous merchandise.

Define the trailer storage area, which has been done.

Mr. Daley stated the ice cream trucks would be registered in Newmarket in August.

The trailers are temporary storage and will not be considered impervious surface.

Review of drainage

The septic tank and system will be approved by the Town Engineer.

Refueling will comply with Section 5.01(D)(7)(e).

Eliminate culverts and the nyloplast systems in the buffer zone

Lee and Durham need to be contacted.

No additional lights beyond what already exists.

No limit on the number of trailers or containers stored on site.

A forklift and snowplow will be allowed for operations.

Refueling will be done on impervious surfaces.

The dumpster will be screened.

We are in agreement this is a minor site plan review.

Diane Hardy stated all of those items, with the exception of the drainage and septic system have been addressed since

the TRC meeting.

Diane Hardy suggested some additional items be considered for conditions of approval. She is in receipt of correspondence from the Conservation Commission with some recommendations.

Maintenance and monitoring of the smart sponges in the nyloplast basins using best management practices and that filing of annual reports with the Town's Code Enforcement Office and Planning Department should be noted on the plan.

There was discussion of the stabilization plan. Val Shelton stated she had thought they had already complied with the Conservation Commission's concerns. They recommended:

Any further actions which may be needed to stabilize the slope shall be implemented.

The spacing and amounts of shrubs are to be approved by the RCCD.

There will be a minimum survival rate of 75% of the plantings over a well-distributed area, with no gap over 100'.

Annual inspections by either the Code Enforcement Officer or the Conservation Commission until such time as compliance is achieved.

The owner shall replant, as necessary, in order to achieve the 75% well-distributed survival rate and slope stabilization.

Note 5 to be removed, as agricultural and forestry uses are not permitted uses in the B3 Zone. (already addressed)

Action

Motion: Janice Rosa made a motion to approve the application with the conditions as outlined above

Second: Peter Roy

Vote: All in favor

Chairman Badger stated he would like to close this by saying to Mr. Daley about two years ago the Board did make a approval for him and he went way beyond what was approved out there and now the Board has caught up with him. This has taken a lot of time and expense on Mr. Daley's part and it has taken a lot of time and expense on the Planning Board. He encouraged Mr. Daley and his engineer to make sure there is full compliance with what was passed tonight, because there wasn't in the past. The inspections by the Conservation Commission and the Code Enforcement Officer will be made. He wished Mr. Daley good luck with his business.

Thurloe Kensington Corporation – Preliminary Conceptual Consultation, North Main Street, Tax Maps/Lots U2, 286, 287, & 288, R2 1, & 5 (portion of) for the proposed development of a shopping center.

Rich Landry, from Thurloe Kensington Corporation, presented the preliminary concept plan for consultation. They are the developers of the project. He stated they were planning to be here with a full site plan application this month, but the winter was bad and they could not get all of their soils mapping and engineering done. They are in the process of adding land to the project. The project is up to 85,000 – 90,000 sq. ft. The supermarket is 32,000 sq. ft. They are talking to restaurants and other businesses who are interested in going in. The reason for adding land was to try to turn the project's style into more of a town square, with more buildings around the parking and along the road to create more of a

streetscape and incorporate sidewalks and street lighting to match what is in the downtown. The architectural style of the buildings along the road would match the downtown feeling. They will have a two-story look. At one time, they had looked at residential uses upstairs, but it is not allowed by zoning and they are not going to pursue it. They have been looking at adding more green space, by getting rid of some of the parking. With varying businesses that have varying peak times, going to a rigid parking formula is not warranted for the size of the development. They are also hoping to add a bus stop and there will be a structure for bike parking. They are trying to make better pedestrian access than what exists at a typical shopping center.

Chairman Badger asked if he could go over what would be in the other buildings. Rich Landry stated the total square footage of restaurant uses is up to 12,000 sq. ft., possibly with some outdoor dining. There will be a mix of professional uses, such as doctors, lawyers and professional office type uses, small retail shops, boutique type shops. They hope to begin building in the fall. With the base tenants they have now, they are 65-70% full and they haven't even started fully marketing the rest of the project. They are buying 3, 7, and 9 North Main Street to use that land for the project and they are looking at 11 North Main and there is land out back they are purchasing.

They have been to NHDOT for a scoping meeting and done all of the high intensity soils mapping. They are assuming the traffic study will come back requiring a traffic signal there, based on the trip generation counts. Chairman John Badger stated several people have asked him if there is a possibility of a traffic circle rather than a light. Rich Landry stated the right of way is not anywhere near wide enough for a roundabout. NHDOT said it is not an option.

Chairman Badger opened the meeting to public comments at 8:18 p.m.

Stuart Wucher, 13 North Main Street, indicated on the plan being shown where his property abuts the proposed shopping center. He expressed concern about what would happen to his property value. There are three small children in his home, one of whom has respiratory issues. They were concerned about the effect of the construction and dust on that child. He is a disabled child. They are also concerned about drainage. He said he was not an engineer, but when it rains hard the soils do not perk well, as such the runoff does not absorb into the groundwater very rapidly. They would be down slope from any drainage and prone to flooding. He feared it would get a lot worse, if the project goes through. He would like to see these things addressed fairly by the Board. He would like the Board to help them to avoid this project from becoming a disaster for them.

Amy Wucher, 13 North Main, is the mother of the three children. She was concerned about what kind of people are going to be on this construction site. She stated there could not be sex offenders next to her home. She stated her children are 7, 5 and 2. She stated the curiosity of her little boy will be incredible, referring to the construction vehicles. She stated they are paying taxes on a \$250,000 house and it will be worth nothing when this is done. She stated that the Board is taking homes from people and making them worth nothing by building this. If they use this new asphalt from UNH that sucks up the rain, where is the water going after that? She stated it would go into her yard with all of the pollution from it. She stated this is a very small town and building something like that is ridiculous. She stated there was no thought to the people living around there. She stated they have not received one notice from the Town of this happening. Chairman Badger explained this development has not happened yet, there is no application yet. He explained tonight is just the developer coming in with his concept. He will come forward in the future with a formal application, at that point, all abutters will be notified.

Elizabeth Dudley suggested it might be helpful to review the scale of this shopping center. This is not the scale of a Market Basket or a Shaw's. Chairman Badger stated they would let the rest of the public speak, then review that.

Jane Ford, 4B Wade Farm, expressed concern about the size and height of the project and about heating and air conditioning units on it. She wondered how much of the visual beauty from their homes would be lost. She also expressed concern about the value of her home.

There were no further comments and the public comment period was closed at 8:25 p.m.

Rich Landry stated the size of the project is about 90,000 sq. ft. It is not anchored by a massive supermarket. It is still a sizable development. There are regulations and ordinances that address a lot of the concerns expressed, as far as dust and debris. There are some regular construction practices that are followed, where you try to keep dust to a minimum with spray trucks, for example. As far as drainage, Appledore Engineering has been looking at the drainage and an Alteration of Terrain permit is needed from the NH Department of Environmental Services, because of the size of the project. Those are pretty strict regulations, as far as drainage goes. We will have to spend a lot of money offsite, as far as road and utilities are concerned. He stated these concerns will be addressed through these regulations and he is more than happy to speak with anyone who would like to talk about their concerns.

As far as buffers, there are visual buffers required and he is more than happy to do those types of things. Regarding building heights, the back of the supermarket will be about 22 feet. Usually, berms and plantings will handle screening from adjacent properties.

He has dealt with property value questions in the past. This area is all zoned for business use. The value of the property as a house might be affected, but the value of the land for business use remains very high, especially when a project like this comes up. It vastly increases the value of the land, because of the zoning. There is not a lot of land in Newmarket that is developable. He stated they looked at three or four sites in town prior to doing this project and this was the only feasible site.

Elizabeth Dudley stated the two driveway entrances to Route 108 seem close and there could be conflict. Rich Landry stated one is a right in/right out only or some sort of restricted access. The idea is to have the main drive coming in as kind of like a boulevard drive.

Elizabeth Dudley also suggested more of a planting area in front of the buildings, not to have parking butt up to the front of the buildings. She also suggested jogging the expanse of the façade of the grocery store to not just have a solid wall. Rich Landry said the buildings would be a downtown style.

Val Shelton asked if they will be looking for parking waivers. Rich Landry stated they would. Val Shelton asked if they would be doing this under a phased approach. Rich Landry stated it would be done all at once. If the supermarket decided not to build the expanded space yet, that might come later, but all of the parking would be done at the same time.

Rich Landry stated the residential land they are acquiring out back is zoned residential and, in Newmarket, the zoning districts follow property boundaries. Based on how the lot gets cut up, they might not need anything changed. He is going to speak to the Town Administrator about scheduling the zoning change with the Town Council.

Elizabeth Dudley asked if the developer would consider making this a smoke-free environment and having a supermarket that does not sell cigarettes. Chairman Badger stated that is way beyond what the Planning Board does. Rich Landry stated he was not sure the tenant would support that.

The developer wanted to get things in motion as soon as possible.

Agenda Item #5 – Other Business

There was discussion of who would be on the Technical Review Committee for the shopping center. Justin Normand, Val Shelton, and Elizabeth Dudley will be on it.

Diane Hardy gave an update on the impact fees. She has received a proposal from Bruce Mayberry, who worked on the study and ordinance for the Town, in 2001. There is a contract on the Town Administrator's desk ready to be signed. There was a meeting on Friday with Bruce Mayberry, Diane Hardy, and Don Parnell, the Finance Director. They are gathering different reports for Bruce Mayberry to reference. They would like to get a subcommittee meeting together in two or three weeks. They would like to have a report for the Planning Board at the July meeting. There is an opening on

that subcommittee for a Planning Board member.

There was discussion of the Economic Development Committee's update of Chapter 6 of the Master Plan. A tentative date of May 31 at 7 p.m. was set for a meeting of the committee to review the draft report.

There is an opening on the Stormwater Management Committee for a Planning Board member.

There was discussion of a letter received from a resident on Dame Road who had concerns about the need for a grocery store/shopping center in Newmarket. Diane Hardy did respond to the letter and addressed her concerns.

Agenda Item #6 – Adjourn

Action

Motion: Janice Rosa made a motion to adjourn at 8:49 p.m.

Second: Peter Roy

Vote: All in favor