

## NEWTON PLANNING BOARD

### MINUTES OF JOINT MEETING OF THE PLANNING BOARD, BOARD OF SELECTMEN AND THE BUILDING INSPECTOR July 25, 2017

**Call to Order:** Chair Barbara White called the Joint Planning Board meeting with the Selectmen and the Building Inspector to order at 7:01 PM. In attendance were: Chair Barbara White, Vice Chair Jim Doggett, Planning Board members: James White, Roger Hamel, Charlie Melvin, Sandra Estabrook, and Circuit Rider Planner Jennifer Rowden.

**Call to Order:** Chair Matthew Burrill called the Board of Selectmen meeting to order at 7:02 PM. In attendance were: Chair Matthew Burrill, Vice Chair Lisa Gonyer, Selectmen Robert Donovan, Lawrence Foote, James Doggett (BOS Ex Officio Planning Board) and Nancy Wrigley, Town Administrator.

Building Inspector Ron LeMere

Minutes of the public meeting were transcribed by the Board of Selectmen Secretary Diane Morin and Planning Board Administrative Assistant Gail LeBlanc. Minutes of the non-public meeting were transcribed by Nancy Wrigley.

The meeting began with a salute to the flag.

**1. Joint Meeting: Planning Board, Board of Selectmen and Building Inspector with Coleman McDonough – Tax Map 14-1-27-2** The Board of Selectmen, Planning Board and Building Inspector held a public joint meeting to discuss a resolution for tax map 14-1-27-2. The issue being that foundation building permits were issued to Mr. McDonough for site plans that had expired. Chair Burrill stated that the Board of Selectmen was asked to issue a cease and desist order for tax map 14-1-27-2. The Board chose not to issue the order but rather suspend the building permits. The Board would like to work with Mr. McDonough to resolve the issues in the best interest of the Town. Chair Burrill stated that one objective from this meeting would be to come up with a timeline of when Mr. McDonough would need to have paperwork submitted so that the project can move forward. On the Town's part, we need to ensure we supply Mr. McDonough with the information he needs in a timely manner to ensure the paperwork is complete.

Attorney Gregory Michael, who is representing Mr. McDonough, provided his opinion on whether the lot was vested. Attorney Michael stated that Mr. McDonough had installed the driveway, utilities, infrastructure, and drainage which would make the lot active and substantial and thus make 14-1-27-2 a vested lot. He stated that his client is willing to work with the Board of Appeals to acquire an "Equitable Waiver". Attorney Michael stated that work began at the

Planning Board Minutes of July 25, 2017 Joint Meeting with Board of Selectmen and Building Inspector

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site when the building permits were issued. He is of the opinion that this work meets the requirements for an "Equitable Waiver".

Attorney Michael requested that the cease and desist order not be issued. Attorney Michael has counseled Mr. McDonough to not continue with construction and if so Mr. McDonough would be doing so at his own peril. Attorney Michael stated that Mr. McDonough would like to continue construction as he has customers relying on him to complete the building on schedule.

Planning Board Member Roger Hamel stated that this meeting was for tax map 17-1-27-2 and no other lot. And that substantial work should pertain to only this lot.

Rockingham Planning Commission (RPC) Circuit Rider Jennifer Rowden, explained that substantial and active completion is strictly for 17-1-27-2 only. The completion of the roadway known as Puzzle Lane does not apply to lot 17-1-27-2, and therefore the lot should not be considered substantial and active. The original plan was approved in 2006 and to be considered substantial and active, the two requirements needed to be completed were a driveway and storm water drainage installed. RPC Rowden noted that neither had been completed within the first 12 months of approval. The only site activity was some removal of trees. She is of the opinion that the lot does not meet "substantial and active" to be considered vested. By today's zoning ordinances, the site plan does not meet zoning standards. An amended site plan and variances will be needed in order to move forward with construction.

Attorney Michael was of the opinion that at some point the Planning Board did approve the site plan. He again stated that Mr. McDonough would like to work with the Town to resolve the issues.

Selectman Vice Chair Gonyer inquired when the storm drainage and driveway were completed on the lot. Mr. McDonough stated that the driveway, swale and the lot were cleared when Puzzle Lane was constructed. Mr. McDonough also informed the Boards that the requirements that then Fire Chief Ingalls requested (the connecting driveway from the adjacent lot) were also constructed.

Planning Board Member Hamel asked where on the plan the second driveway was. Mr. McDonough pointed where on the plan it was located which was required by Fire Chief Ingalls. Planning Board Member Hamel asked if the Planning Board had approved the driveway. Mr. McDonough stated yes. Planning Board Member Hamel then asked where the updated site plan is? Mr. McDonough stated that the approved plan was over 10 years ago. Attorney Michael expressed that Mr. McDonough was constructing the site according to requirements set forth by Chief Ingalls.

Planning Board Member James Doggett explained that it is standard procedure for the Planning Board to meet with both the Fire and Police Chiefs to ensure that site plans meet safety requirements.

Planning Board Member Charles Melvin asked if the Road Agent issued driveway permits. Road Agent Michael Pivero stated that this was prior to his tenure. Mr. Pivero does not have a driveway permit that goes back that far. Planning Board Member Melvin asked if the former Road Agent, Mr. Frank Gibbs, who was present, could speak to this. Mr. Gibbs explained that no driveway permits were issued at that time because the portion of the road where lot 2 is located was not a Town road, but a private road at the time, and driveway permits are not issued on private roads.

Planning Board Member Sandra Estabrook asked if the Town has a copy of the permit for the construction of the storm water discharge. RPC Rowden passed around sheet 2 of the site plan where the storm water discharge should be located. RPC Rowden is doubtful that the storm water discharge was created. RPC Rowden stated that she has not done a site walk to verify this.

Mr. McDonough stated that he does not believe that the proposed drainage was constructed on the site. Mr. McDonough will provide a letter from the Fire Chief Ingalls with the requirements to continue the parking lot from the Fire Department.

Planning Board Member James Doggett inquired who Breeze Realty Trust was. Mr. McDonough explained that they were the previous owners of the property when the site plan was approved. Mr. McDonough purchased the property 6 months ago.

PRC Rowden stated the next steps that can be taken. The Board of Appeals would need to grant the "Equitable Waiver". There are still variances that would need to be approved which are structural setbacks and storm water drainage structures in the wetlands setbacks.

Chair Burrill asked what steps need to be done so Mr. McDonough can continue construction. Planning Board Chair White explained the process that needs to be followed which is standard procedure. Planning Board Member Doggett further explained that once a plan is accepted, the Town Engineer will need to visit the site to determine how many inspections will need to be done. The Town Engineer will then recommend the amount of funds to be placed into the NPREA account to cover the inspection costs. The Town Engineer will recommend the amount of money that should be put into a Restoration Bond to be used should the developer walk away from the uncompleted site. If that should occur, the Bond fund would be used by the Town to restore the site.

Chair Burrill asked if there's a way to avoid typical delays without violating any ordinances, laws, etc. RPC Rowden explained the basic timeline that would

need to be followed. The completed application would need to be submitted prior to August 17, 2017 to be placed on the Planning Board agenda September 12, 2017 agenda. Once the Planning Board accepts jurisdiction, they have up to 65 days to accept, deny or conditionally accept the site plan. Because there are variances needed, the applicant can submit the request concurrently to the Board of Appeals.

Attorney Michael expressed concern that the Planning Board docket may be heavily loaded. Planning Board Chair White stated that they were not.

Selectman Vice Chair Gonyer asked if the Developer could be placed on the Planning Board Agenda and then submit the site plans. Attorney Michael stated “no” for the reason that abutters need the opportunity to review the plan prior to the public hearing.

Planning Board Member Estabrook asked Attorney Michael if there was a timeline for Mr. McDonough’s customers. Attorney Michael stated “yes”, the customers would like to be in the building as soon as possible.

Planning Board Member Hamel asked if the extra driveway is on the site plan would they need another variance. RPC Rowden stated that it could be a waiver within the site plan. The original conditions on the site plan would need to be updated as well. RPC Rowden stated that once she receives the site plan she checks to see if any variances are needed.

Board of Selectmen Chair Burrill informed Attorney Michael that there should not be construction going on until the new site plan and any variances have been approved. Attorney Michael informed the Boards that Mr. McDonough may continue the construction at his own peril. Chair Burrill stated that a cease and desist order may need to be issued. Attorney Michael asked that a cease and desist order not be issued. Mr. McDonough stated that he has two customers and that one customer would like to be in the building by the end of September.

Mr. Paul Szot asked if Mr. McDonough could put funds into a bond to protect the Town and allow him to continue construction. Planning Board Member Doggett explained that there needs to be a valid reason to require a bond.

Planning Board Member Melvin asked if the bond could be taken by the Selectmen. RPC Rowden stated it cannot because there is no process in place to hold the bond.

**Selectman Doggett moved to go into non-public session at 8:05pm under RSA 91-A: 3 II (c). Seconded by Selectman Gonyer for discussion.**

**Motion passed with a roll call vote: Burrill – aye, Gonyer – aye, Donovan – aye, Foote – aye, Doggett – aye.**

The Selectmen left the room to go into non-public and the meeting was in recess.

**Selectman Donovan moved to close the non-public at 8:25pm. Seconded by Selectman Gonyer with a unanimous roll call vote: Burrill – aye, Gonyer – aye, Donovan – aye, Foote – aye, Doggett – aye**

**The Joint public meeting was called back to order at 8:25 PM.**

**Selectman Doggett moved that the Board just came out of a non-public session under RSA 91-A: 3 II (c) and that they keep all matters discussed confidential until in the opinion of the majority of the Board the circumstances no longer apply. Seconded by Selectman Gonyer with a unanimous vote.**

Chair Burrill stated that at the last Board of Selectmen's meeting, July 18, 2017, a suspension of the building permit was issued for tax map 14-1-27-2 and that suspension of the building permit will remain in effect. The Board of Selectmen is requesting a meeting with 125 Development Corporation, as a follow up, on September 5, 2017. No building permits will be issued until the matter is resolved. Attorney Michael asked if the suspension was a cease and desist order. Chair Burrill stated the building permit has been suspended.

Planning Board Chair White stated that if a completed application is submitted prior to August 17, 2017 the Planning Board would place it on the agenda for September 12, 2017 Planning Board meeting.

Planning Board Administrative Assistant LeBlanc stated the request for variances should be submitted to the Board of Appeals 7 days prior to the August 14, 2017 Board of Appeals meeting to be placed on the agenda. The Board of Appeals will review the request. The Board of Appeals would then hold a public hearing on September 11, 2017.

RPC Rowden stated that Planning Board does have the authority to revoke a site plan should they chose. RPC Rowden stated that in her opinion the approach being taken by both Boards is the best option.

## **2. Plan Review for Fire/Rescue Station**

Construction Manager (CM) Mike Pivero of Eastern Seaboard Construction addressed both the Planning Board and the Board of Selectmen. CM Pivero stated he is before the Planning Board to get approval for the site plans. He asked the Board of Selectmen to remain seated so that once the site plan presentation is done he can address the timeline for the project with them.

Civil Engineer Dennis Quintal was contracted by the Town to prepare the site plans. He reviewed the site plans. The original driveway will need to be re-

constructed and some trees along Merrimac Road will need to be removed. The plan must be submitted to the State for approval which could take up to 50 days.

Planning Board Member Doggett would like to have a copy of the plans once approved by the State to be held by the Planning Board. Planning Board Chair White and J. Doggett stated that the Planning Board does not need to accept the site plan because the property is Town owned. The Planning Board does not have any jurisdiction to accept or deny. The Planning Board can make recommendations. Planning Board Member Estabrook asked if the zoning ordinances, rules for setbacks, etc., will need to be followed. Planning Board Chair White confirmed that all zoning ordinances, rules, etc., will need to be followed.

Planning Board Member Melvin asked where the funds come from to pay the Town Engineer. Planning Board Chair White stated the Town will pay for the fee. Selectman Gonyer stated that the funds will come from the Municipal Bond that was voted on in March by the residents. Planning Board Member Melvin asked how it would be billed. Selectman Gonyer explained that an invoice will be generated and placed on the vendor manifest.

CM Pivero asked for clarification on the Planning Board's duties when it comes to construction by the Town. Planning Board Member Doggett explained the Planning Board does not have any jurisdiction when it comes to Public buildings. RPC Rowden further explained the Planning Board can advise and make recommendations but cannot enforce the changes. CM Pivero will present the plans to the Planning Board at the next meeting.

CM Pivero informed the Board of Selectmen that there could be a delay in construction due to waiting for State approval. Chair Burrill asked if this would bring the construction timing into the winter rates. CM Pivero affirmed that it might raise the cost of construction. Chair Burrill asked if anyone knew someone at the State level that would listen to the concerns and help move the approvals along. Mr. Quintal stated that he has already spoken with the State and was told it should not take long for the approval as this is not a huge project. There may be some minor changes that maybe required.

**Selectman Foote moved to authorize the Construction Manager to begin construction of the foundations prior to receiving State approvals. Seconded for discussion by Selectman Vice Chair Gonyer.**

Chair Burrill stated that starting without the approvals may open the Town to undue risk. Selectman Doggett agreed with Chair Burrill. CM Pivero suggested waiting two weeks prior to starting construction.

**Selectman Foote rescinded his motion Selectman Vice Chair Gonyer rescinded her second. The Board of Selectmen's session of the joint**

meeting was adjourned at 8:57 PM on a motion by Selectmen Gonyer with a second by Selectmen Donovan with a unanimous vote

The Planning Board meeting continued.

**3. Board Business and Correspondence**

**3. a. Acceptance of minutes from July 11, 2017:** C. Melvin moved to approve the minutes of July 11, 2017. R. Hamel second with unanimous vote.

**3. b. Manifests:** None

**3. c. Correspondence:** The National Business Institute is sponsoring: Land Use Law: Current Issues in Subdivision and Zoning in Manchester October 26, 2017. Contact the Administrative Assistant for details if interested in attending.

**4. Adjourn:** J. Doggett moved to adjourn at 9:05 PM, second by C. Melvin with unanimous vote.

Meeting adjourned at 9:05 PM.

Respectfully Submitted,

Gail M. LeBlanc, AA  
Newton Planning Board

Diane Morin, Secretary,  
Board of Selectmen