

Planning Board
Minutes of March 3, 2009
Approved April 7, 2009

Members Present: Tom Vannatta, Chair; Travis Dezotell; Deane Geddes; Bill Weiler, Dick Wright, Ex-officio; Ken McWilliams, Advisor

Mr. Vannatta called the meeting to order at 7:10 p.m.

The Board reviewed the minutes of January 7, 2009 and made corrections.

Mr. Weiler made a motion to approve the minutes of January 7, 2009 as corrected. Mr. Dezotell seconded the motion. All in favor.

The Board reviewed the minutes of January 28, 2009.

Mr. Geddes made a motion to approve the minutes as written. Mr. Dezotell seconded the motion. All in favor.

CASE: 2004-006: Angel Hawk Subdivision - Jaimie Gould aka Advanced Conception Property Development, LLC – Development Agreement

Mr. Vannatta informed the Board that on March 3, 2009, Mr. Gould left a message on Mr. Vannatta's answering machine claiming that prior to the Board's letter dated February 19, 2009, he had not had any correspondence from the Board other than a conversation with Mr. Vannatta back in January regarding the delinquent documents, correspondence for which Mr. Gould claimed he had not yet received. Mr. Gould stated to Mr. Vannatta that he still has a cash flow problem, and he has been away in Georgia building a house, which was the reason given for not providing the documents.

Mr. Vannatta informed the Board that he did not call Mr. Gould back since he has been away himself and first needed to consult the Board. He commented that if the Board still wishes for him to respond, he will do so by letter or telephone. He informed the Board that both he and Mrs. Freeman have emailed Mr. Gould in addition to the letters and telephone calls. The bottom line is that the Town still does not have the signed agreement.

Mr. Wright commented that Mr. Gould needs to meet with the Board as soon as possible to discuss the status and future of the subdivision; otherwise, the Town will continue to play phone tag with him. He suggested that Mr. Vannatta should speak to Town Counsel before the Board moves forward with considering revocation of the subdivision.

Mr. Weiler commented that the Planning Board's February minutes gives deadlines, which have not been honored. Mr. Gould had indicated that he wanted to delay setting up the escrow account. The Board feels the first order of business is to get the contract in, and then the Board will talk about negotiating the terms of the escrow account.

Mr. Dezotell commented that it appears that Mr. Gould's method of operation is to ignore the Boards' attempts to contact him and then say 'Nobody told me.'

Mr. Geddes informed the Board that Mr. Gould had called him, too. Mr. Geddes told Mr. Gould that he needed to call Mr. Vannatta to discuss the Board's position regarding the status of the subdivision. Mr. Gould advised Mr. Geddes that he had already called Mr. Vannatta. Most of Mr. Geddes' discussion with Mr. Gould was regarding a proposed house Mr. Gould wants to build. Mr. Geddes stated that they did not talk about the security issue of Angel Hawk subdivision. Mr. Geddes suggested that Mr. Vannatta should try to make telephone contact with Mr. Gould before a formal letter goes out.

Mr. McWilliams commented that the option in the letter was to bring in the signed agreement to the Town then there will not be a hearing to consider revocation of the subdivision.

Mr. Dezotell asked what would be Mr. Gould's advantage to not signing the agreement.

Mr. Wright commented that there would be no advantage except that it buys Mr. Gould time to continue to build without putting security out. He commented that it is sounding as though Mr. Gould is not a viable candidate to finish this subdivision.

Mr. Weiler commented that if Mr. Gould has the money to start a new house, then he should be paying the escrow for inspection services. He should not be planning anything until he puts the bond up for the escrow.

Mr. Vannatta agreed to call Mr. Gould to try to impress upon him the importance of providing the signed documents as soon as possible.

CASE: 2008 – 021: Final Site Plan Review – Cottage Industry – Joan Morena – Rollins Road – Massage Therapy Business

Mr. Vannatta informed the Board that Ms. Morena had called him and was very upset at the Boards' decision on January 28, 2009 that she has to begin her application for site plan review all over. He stated that he explained to her that the Planning Board cannot hear her application until she has received a Special Exception from the Zoning Board of Adjustment.

Mr. Weiler commented that she only needs to have her hearing re-noticed and get the proper application materials in as she should have done the first time.

Mr. Dezotell commented there were many things that went wrong in this particular process. He commented that his concern is that there are so many hurdles that an applicant has to jump through for one simple business in their home. The Board should be trying to protect the general public, but also the Board needs to protect property owner rights. The Board should also not impose on someone's personal liberty.

Mr. Weiler commented that Ms. Morena could have been all done and approved already if it weren't for the covenants buried in her deed.

CASE: Subdivision Regulation Amendments

Mr. Vannatta informed the Board that if anyone has any suggestions for subdivision amendments, they should forward them onto Mr. McWilliams.

CASE: Sign Regulations

Mr. Wright commented that the sign regulations seem to be straight forward when they are written out, but when it comes to enforcing them, it is much different. A couple of things the Board of Selectmen have run into are as follows:

14.2.6.1 – Free Standing Temporary Sign: One (1) free standing temporary sign (two signs back against back shall be considered a single sign) shall be permitted for each business site not to exceed sixteen (16) square feet in surface area. Temporary signs shall not be illuminated and shall not be placed within the public right-of-way.

Issue: The Board of Selectmen does not have jurisdiction in the public right-of-way along Route 103 and Route 103B. Also the public right-of-way randomly changes in width along Route 103 and Route 103A.

Mr. Weiler commented that the regulations apply to Town roads only.

Mr. Wright commented that when the regulations are vague, people interpret them to their own advantage. He suggested that ‘...*within the public right-of-way of any Town Road...*’ be inserted to clarify that issue.

Mr. Vannatta asked if the Board of Selectmen have had any people complain regarding the signs along Route 103A.

Mr. Wright stated that the Board of Selectmen does not go looking for trouble. They act on complaints of violations that are reported.

14.2.6 Temporary Business District Sign: One (1) temporary sign shall be permitted as outlined below (14.2.6.1 and 14.2.6.2) for a period not to exceed one hundred and eighty (180) days for a calendar year.

Issue: How does the Board determine the 180 days? The Board needs a form that identifies the date of inception and the date of closure. The Board of Selectmen does not have the authority to create such a form; that is in the Planning Board’s realm.

Mr. Vannatta asked if anyone has ever looked into what other towns have in place for a sign ordinance.

Mr. Wright commented that Bradford’s is similar. If the Town is going to have regulations, then it needs to enforce them. If the regulations are not going to be enforced, then get rid of them.

Mr. Weiler commented that there needs to be some regulation of temporary signs because unrestricted, there would be a profusion of signs.

Mr. Geddes commented that it is important to permit real estate signs to be off-premises. Sometimes there are Open House signs which may be up for only 4 hours, sometimes directional signs are necessary when a property is not on a main road. The home owners expect the realtors to do their best to sell their property, and signs are imperative. Most realtors use tree signs because the planted signs tend to disappear, especially in the winter.

Mr. McWilliams commented that Article 14.3.1 pertains to on-premises signs. Nothing in the ordinance addresses off-premises real estate signs.

14.4.6 Two (2) off premises signs shall be allowed by permit for each business located in the Town of Newbury. These shall be one (1) foot high by six (6) feet wide and mounted nine (9) feet above grade. All signs shall have black background with white lettering six (6) inches high.

Issue: This article should be deleted.

Mr. Wright commented that the Town is awfully lucky that this article has not been sought by the area businesses because that would create a proliferation of signs in Town. He commented that there should be no off-premises signs allowed for businesses except real estate signs.

Mr. Weiler commented that Article 14.2.5 requires a permit from the Board of Selectmen for a business sign. Some activities, such as tree farms, should be exempt from permit requirements.

14.4.2 Lighting on face of sign shall not exceed eight (8) foot candles.

Issue: Foot candles should be put in lay terms such as x# watt light bulbs.

14.4.4 Sufficient shades on indirect lighting shall be used to prevent sight of the light source from the public right-of-way.

Issue: Shades of indirect lighting is hard to interpret.

Mr. Weiler explained that ‘shades of indirect lighting’ means that the public should not be able to see the light source, but the light beam will be seen.

Mr. McWilliams commented that more communities are becoming more concerned with how the light is directed. Downward is a more favored angle, not skyward. Communities are becoming more aware of dark sky preservation.

14.4.? Banners and Flags

Issue: There is no regulation on banners and flags and there should be.

Mr. Wright commented that there is currently no regulation on banners and flags and there should be. Sometimes they can be distracting and aesthetically obnoxious. Perhaps a time limit (two weeks or less) could be created.

Mr. Dezotell commented that the Board needs to receive input from the business people in Newbury regarding the commercial sign needs in Town. They should be invited to a worksession to give input.

Mr. Vannatta suggested that the Newbury business people be invited to the Board's April worksession.

CASE: ADM1 – 004: Planning Board Issues

Mr. Weiler advised the Board of a recent court case in 2007 Carlson's Chrysler vs. City of Concord in which the court ruled that a Town may execute its zoning power solely to enhance aesthetic values. This court ruling is critical for Newbury since Newbury is in the heart of a beautiful part of the State.

CASE: CODE – 003: Subdivision Regulations & Issues

Mr. Weiler advised the Board of a Plan-Link discussion regarding conditional approvals for subdivisions. He commented that we are going into a time when the Board will be getting some subdivisions that languish for a long time.

Mr. McWilliams commented that the problem is that in the regulations there is nothing that says how long a developer can take to meet the conditions of approval. Some conditionally approved subdivisions are sitting and doing nothing.

Mr. Weiler commented that Newbury does not have a rule regarding meeting conditional approvals and time commitments. The Board should think about setting a time limit to meet conditions of approval to maintain consistency with the limits on building.

Mr. Wright commented that when a developer begins a subdivision, they usually log the land first. The logging road then becomes the subdivision roads. The regulations should be stronger regarding logging and subdivision roads. The owner/developer should come to the town at the time they log if they know they will be seeking a subdivision/development approval of that land.

Mr. Weiler commented that subdivision Article 4.1 Road Construction addresses that issue.

Subdivision Article 4.1 Road Construction: No Subdivision Road or road for any other purpose shall begin to be constructed on land where a subdivision will be proposed before an application for subdivision is approved. The cutting of trees shall be construed as evidence of the beginning or road construction. The Board reserves the right to seek a cease and desist order, and to make relocation of a condition of approval. See Sections 5.1 and 5.2.

Mr. Dezotell made a motion to adjourn. Mr. Geddes seconded the motion. All in favor.
Meeting adjourned at 9:00 p.m.

Respectfully submitted,

Linda Plunkett
Recording Secretary