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Exeter Planning Board

October 8, 2015

1. The meeting was called to order at 7:00 pm in the Nowak Room of the Exeter Town Offices on the above date.
2. MEMBERS PRESENT: Landon Plumer (Alternate), Don Clement (BOS Rep), Kelly Bergeron (Chair), Gwen English, Katherine Woolhouse, Ken Knowles, Rob Mike-Mayer, Aaron Brown and Pete Cameron.

STAFF PRESENT: Glenn Greenwood (Interim Town-Planner), Sarah McGraw (Recording Secretary)

3. NEW BUSINESS

Ms. Bergeron announced all regular members would be voting.

Continued public hearing on the application of Tuck Realty Corp. for a mixed use site plan review and Conditional Use Permit for the proposed construction of two (2) commercial buildings and two (2) multi-family residential buildings on the property located at 80 Epping Road. The subject property is located in the C-2, Highway Commercial and R-4, Multi-Family Residential zoning districts. Tax Map Parcel # 55-3. Case # 21506

Mr. Clement requested for Mr. Mike-Mayer to recuse himself as a board member as he is a property owner on Epping Road. Ms. English noted that Mr. Mike-Mayer was not a voting member at the meeting. Mr. Clement said that he is concerned about a conflict of interest if Mr. Mike-Mayer sits at the table. Mr. Knowles stated that a member can only recuse him/herself from the board per New Hampshire State Regulations. Mr. Clement replied that it is about the perception of the matter and Mr. Mike-Mayer's relationship to the case.

Mr. Mike-Mayer stated that he understood the issue with him sitting on the board for the case but felt that there is no compromise in objectivity and he would not be a voting member.

Mike Garrepy representing Tuck Realty-Corp referred to a letter from concerned residents about 80 Epping Road which included Mr. Mike-Mayer's signature. Mr. Garrepy stated that he was troubled that Mr. Mike-Mayer had sat as a voting member the two previous meetings that 80 Epping Road was discussed. Mr. Garrepy then gave Ms. Bergeron the letter stated above to review. After reviewing the letter Ms. Bergeron requested that Mr. Mike-Mayer remove himself knowing that it was ultimately his choice to be recused.

Mr. Mike-Mayer said that the letter was drafted and of the opinion of Mr. Willson and he was asked to sign the letter. Mr. Mike-Mayer said that he would happily move to the public.

Mr. Mike-Mayer recused himself at 7:12.

Jonathan Ring of Jones and Beach Engineers presented the case and passed out attachments to the application; the Conditional Use Permit from August 11, 2015 and a waiver request letter. The applicant is requesting the approval of the Conditional Use Permit. Mr. Clement asked when the state permits were submitted to the State. Mr. Ring said the Alternation of Terrain Permit was submitted on August 2, 2015 and sewer discharge permit has yet to be submitted.

Ms. Bergeron asked if the AOT was resubmitted. Mr. Ring said that the revised AOT permit was submitted on September 18, 2015 and the request letter had crossed it in the mail.

Mr. Ring reviewed the waivers from the Exeter Site and Subdivision Regulations found on file at the Exeter Town Offices.

Mr. Plumer inquired about the waiver from Section 9.14.9 "Roadway and Fire Lanes Less Than 24'." Mr. Greenwood said there was no issue with the waiver at the Technical Review Committee. Mr. Clement asked how far into the wetland setback would the Applicant be encroaching from Section 9.9.2. Mr. Ring said it would be about 50 feet. Ms. Woolhouse asked if 9.9.2 allowed for two buildings instead of three. Mr. Ring said that the third building would have been smaller and not inside of the setback.

Mr. Knowles pointed out on page C4 of the plan; the limit of clearing was not noted. Mr. Ring said that the proposed tree line was a 40 foot no cut no disturb area and because of the building elevation and slope the grade needed to transition into the wetland. Mr. Knowles expressed that he was not in support of clearing up to the wetland in the "no cut no disturb" area. Mr. Ring said that he would note the concern and propose reducing the slope to the wetland.

TOWN PLANNER COMMENTS:

Mr. Greenwood said he did not have a problem with the waivers but noted that in section 9.9.2 it recommends requesting advice from the Conservation Commission. Mr. Clement commented that the Planning Board was in the process of gaining input from the Conservation Commission and that there should be a better process for clarifying when the Conservation Commission should provide input.

Mr. Brown commented that the Conservation Commission should have been aware of the application and that it may have been a breakdown in communication. Ms. Bergeron clarified that she has reached out to the Conservation Commission. Mr. Garrepy said that the Applicant did request the Conservation Commission to review the buffer and wetland impact and asked for a special meeting. The Commission was not able to meet before the current Planning Board meeting. Mr. Garrepy said he was willing to work with the Commission on the wetland areas in the R4 portion. Mr. Brown referred to a letter from Ms. Murphy dated August 11, 2015 where Jonathan Ring introduced the project. Mr. Plumer asked if a site walk with the Commission had

been scheduled. Mr. Garrepy said that a site walk had been scheduled. Ms. Bergeron said it was unfortunate not have the recommendations at the time of this meeting.

Mr. Knowles said that when he was chairman, the waivers were not granted until the Board was ready to approve the final plan. Mr. Cameron asked about the Conservation Commission input. Mr. Knowles replied that Waiver 9.9.2 has been approved before without Conservation Commission recommendations.

Mr. Greenwood noted that there is still time to approve this plan at the next meeting. The 65 day window does not close until the end of October. Ms. English agreed that she would like more information about Section 9.9.2 and feedback from the Commission along with other issues about the current application. Mr. Clement said that if the plan has met the site and subdivision regulations, then the plan cannot be held up.

Mr. Garrepy noted that the plan was introduced in March 2015 with a long review process and jurisdiction was taken in August 2015.

Mr. Clement asked what the next steps were for the meeting procedure. Mr. Knowles said that the Board should comment on the general site plan.

Mr. Ring said that the CUP was submitted on August 11, 2015. Mr. Ring read the responses to the conditions.

BOARD COMMENT

Mr. Knowles noted that the in the table of impacts in the application, vernal pools were not checked off. He added that vernal pools rely on upland habitat as much as the vernal pool.

Jim Gove of Gove Environmental reported that egg masses were dried up before they hatched. One fairy shrimp was found which classifies it as a vernal pool. The road in the plan was designed for least impact and went under Rockingham County Conservation District review. The road was then tweaked to go around the vernal pool. Mr. Garrepy said that the language of the ordinance says that it is up to the Board after RCCD review. Mr. Greenwood said that RCCD members could not come to the meeting.

Mr. Greenwood said that it was his understanding that it was up to the RCCD to establish wetlands delineations.

Mr. Knowles asked about the concrete box culvert for animal passage. Mr. Knowles suggested an open box culvert instead. Mr. Gove replied that the open box culvert requires significant excavation on both sides.

Ms. English inquired about 2.e pertaining to the 300 foot shore land protection area. She says she sees buildings within this district. Mr. Greenwood said that is why the CUP is required. Ms. English deferred her questions to the CUP discussion. Mr. Clement inquired about 9.3.1 the

shore land protection district. There were questions about why this applied as it is a multifamily residential development. He read uses allowed in article 9.3.1 and the Planning Board may grant the CUP only after written findings of fact are made and reviewed by the RCCD if required by the Planning Board. Mr. Clement asked if they should be going to RCCD to answer questions under 9.3.1.

Mr. Greenwood said that from the discussion at the last meeting there has been discussion with RCCD about the wetlands impacts which are similar to the shore land protection district. The plan has provided details of the intent to meet the criteria. Mr. Greenwood said that the section on spawning grounds and wildlife habitat wasn't quite touched upon with RCCD. Mr. Greenwood talked with Lenny Lord about the issue. He asked him about providing services, and the response was that RCCD does not provide original source information but would rather review information. Mr. Greenwood said he doesn't feel comfortable agreeing or disagreeing with 2.c.

Mr. Garrepy said that Mr. Gove prepared wildlife assessments that were viewed by RCCD. Mr. Gove said that his staff was sent out in the spring and fall to assess wetlands and habitats. Mr. Greenwood said it was his understanding that it was required by RCCD to review wetland delineation but was not sure the question was posed about 2.c. In a letter from June 16, 2015, RCCD discussed the natural resources review and were asked to review all aspects.

Mr. Garrepy explained that the plan could be redesigned to not require a CUP but it still might not be the best case.

Mr. Brown commented on the conservation area of the plan and who would be responsible for maintenance. Mr. Garrepy said that annual monitoring could occur as an agreement.

Mr. Knowles said the question was not whether the plan designed has impact on the shore land zoning but asks to review peer analysis. They are asking if RCCD agrees that there is no impact. Mr. Knowles said that they haven't asked RCCD about wildlife.

There was discussion on the Applicant providing sidewalks along their property on Epping Road. Mr. Clement was concerned there would not be room for a third turning lane. Mr. Ring spoke on the dimensions of the turning lanes. Mr. Garrepy noted that he did not agree to a fund for sidewalks but to dedicate land for a future sidewalk. Mr. Knowles commented that applicants rarely follow through with dedicating land on private property. Ms. Woolhouse expressed from her experience on Epping Road, how a sidewalk would be safer. She also asked about environmentally sensitive maintenance of the property. Mr. Gerrepy said that the Applicant will use language from another project's maintenance plan and is willing to work with the town on maintenance practices.

Mr. Knowles discussed some technical aspects of the plan such as the catch basins in the drainage plan, the sediment for eBay is small for the catch basin, the three dead ends in the

parking bays, turning radius at Aroma Joes and the porous pavement design. Mr. Ring agreed to check into this comments.

Mr. Greenwood commented that the site and subdivision regulations may allow the Planning Board to require sidewalks but doesn't speak to how to finance them.

PUBLIC COMMENT:

Robert Mike-Mayer, Exeter Resident commented that the size of the current plan is the recurring theme to the issues the board has expressed. Mr. Mike-Mayer suggested reducing the size of the buildings to lower the overall impacts. He said that even though the number of buildings was reduced from three to two, the size of the two buildings grew in width and height. Mr. Mike-Mayer said that the sidewalk issue is difficult to solve when including the turning lanes. He said that the vernal pools must be viable because of evidence of fairy shrimp. Mr. Mike-Mayer questioned the meaning of the phrase "project disturbance" referred to in 9.3.1 2.c. He also questioned the waiver 7.4.7 and 9.6.2 noting the size of trees to be removed shouldn't be ignored.

David Willson of 7 Millstream Drive, Exeter, commented that if the Planning Board had asked for an assessment of Wildlife from RCCD, they would have seen the habitat present. He said he was willing to share the media associated with the present habitat with the Board. Mr. Willson noted that the only people that could submit requests for a rehearing with the ZBA were the abutters of the property leaving residents across Colcord Pond without a say. In a short period of time Mr. Willson tried to get the letters together and had asked Mr. Mike-Mayer to sign because of his status as a homeowner on the pond.

Mr. Greenwood suggested submitting the report by Mr. Gove to the RCCD but if it is not deemed relevant then it may leave Planning Board in an awkward position.

Mr. Knowles said he would want item 2.c to be reviewed. Ms. English commented that the natural heritage inquiry is not a "boots on the ground" assessment.

Mr. Garrepy said that they check the natural heritage data base and send Jim Gove out to do the physical assessment. Mr. Garrepy said that they do not know where they will go from the current position if there is another review. Mr. Garrepy said that they may adjust the plan to be within the 150 foot zoning setback.

Mr. Greenwood commented to caution with that plan that the CUP says that kind of adjustment may involve a CUP anyway. Mr. Clement agreed that this route would not make the process easier. Mr. Garrepy asked for assurances to move the review along to be back in front of the board on October 22 and not a four month delay.

Ms. Bergeron said that if the study is reviewed in a timely fashion then it is the route to take. She asked Mr. Greenwood to confer with RCCD on being able to review Mr. Gove's assessment.

Mr. Clement made a motion to request RCCD to review the wetlands assessment to answer the question of the CUP section 9.3.4 G 2C in regards to wildlife and habitat present. Second by Mr. Knowles.

Mr. Cameron asked to clarify the report given for review. Mr. Greenwood said the report that Mr. Gove conducted is what RCCD is going to review. Mr. Greenwood explained that there may be limitations on the motion for that exact report. Mr. Knowles said that in the response to 2c it says that there will be no detrimental impacts to spawning grounds. Mr. Brown said that if the report is deemed inadequate then the Planning Board could request more information.

Mr. Clement restated the motion for the Planning Board to request written findings from the Rockingham County Conservation District to determine whether the proposed use does not result in undue damage to spawning grounds as recommended by section 9.3.4.G.2c. second by Mr. Knowles. VOTE: 8 yays 1 abstention

Ms. English asked why the man- made drainage pond was not considered a wetland. Mr. Knowles stated that RCCD doesn't specify man made versus natural. Mr. Gove responded that the wetland was flagged and read from section 9.1.3 that it shall not be part of the overlay.

Ms. Bergeron stated that the motion should include the 40 foot no cut no disturb, Conservation Commission conditions and Mr. Greenwood items. Mr. Clement asked about reducing parking in the commercial area and set aside land for parking in the future.

Mr. Ring asked if there is flexibility with submitting requested information since the deadline would be the Wednesday prior to the meeting. Ms. Bergeron said there was flexibility.

Mr. Knowles motioned to continue the meeting to October 22, 2015 second by Mr. Clement. VOTE: Unanimous

Continued public hearing on proposed changes to the Planning Board's "Rules of Procedure." Draft copies of the document are available in the Planning Board office.

Mr. Clement inquired about 5.4, Site walks

Mr. Mike-Mayer rejoined the meeting at 9:58 pm

Mr. Clement said that site walks need to be noticed pursuant to 91A-2. Ms. Bergeron said she had inquired about site walks with Town Council and 5.4 had been approved by Town Council.

Mr. Brown suggested moving the discussion to Other Business as there is another case waiting to be heard.

4. OTHER BUSINESS

Rollinsford Associates-case number 21305

Michael Donahue representing Rollinsford Associates stated that the Applicant had worked with the Planning Board on the lot between Volvo and the McDonalds site. Mr. Donahue said the site had been approved by the Planning Board and there was an agreement. There was a change to the McDonalds site that happened during a lot line adjustment. A legal appeal was filed and they worked with Town Council and the Town. The appeal was resolved at the Supreme Court level. On October 30, 2014 the appeal was resolved. While under litigation Rollinsford Associates was not able to meet the conditions of approval which expires on October 30, 2015. Rollinsford Associates is requesting to extend the approval by 1 year to October 30, 2016.

Mr. Brown motioned to grant the extension for case number 21305 for 1 year to October 30, 2016, second by Mr. Knowles. VOTE: Unanimous

Linden Commons-case number 2711 Request for release of escrow funds for street trees

Some Planning Board members walked the site where trees were to be planted at Linden Commons. Mr. Plumer said it was hard to tell where street trees were planted. Mr. Greenwood stated that the trees planted were not street trees but on landowner's property.

Mr. Greenwood stated that the trees were planted tastefully but not done according to the site plan. There was more discussion as to whether Mr. Chinburg should plant more trees. The Board agreed that more trees should be planted. Mr. Greenwood advised that the Board does nothing as the site plan states 22 street trees are to be planted.

156 Epping Road LLC, -Case number 21504

Mr. Knowles recused himself at 10:19 pm.

In a letter dated October 8, 2015 Jen Mates Assistant Town Engineer wrote the Public Works Department received a bond release from Eaglebrook Engineering and Survey, LLC for 156 Epping Road. The letter recommended to release the bond of \$20,000 is released to the applicant, Michael Lambert.

Mr. Cameron motioned to release the bond of \$20,000 for case number 21504. Second by Ms. Woolhouse. Mr. Plumer was designated as a voting member. VOTE: Unanimous

5. APPROVAL OF MINUTES: September 24, 2015

Mr. Plumer moved to approve the minutes of September 24, 2015, second by Mr. Knowles. VOTE: 7 yays : 2 Abstentions

Continuation of the "Planning Board Procedure" discussion

Ms. Bergeron said she will include in 5.4c "pursuant to 91A-2"

Mr. Cameron motioned to adopt Planning Board Rules of Procedure as amended second by Ms. English.

Mr. Knowles motioned to adjourn the meeting, second by Mr. Cameron. VOTE: Unanimous

The meeting was adjourned at 10:35

Respectfully Submitted

Sarah McGraw

DRAFT