

Raymond Planning Board Minutes

June 17, 2010

Approved 06/24/2010

Place: Raymond High School; Media Center

Call to Order: 7:00 p.m.

Members Present: Jonathan Wood, Chairman; Carolyn Matthews, Vice Chairman; Bill Hoitt, Selectmen's Ex officio; Gretchen Gott; Jim Kent; Bill Cantwell.

Staff Present: Ernest Cartier Creveling; Community Development Director; Robert Price, Planning Technician.

Pledge of Allegiance

Approval of Minutes

Members Sitting for Approval of Minutes: Jonathan Wood; Carolyn Matthews; Bill Hoitt; Gretchen Gott; Bill Cantwell; Jim Kent.

MOTION: Mr. Cantwell made a motion, seconded by Mr. Kent, to approve the minutes of June 03, 2010 as amended. The motion carried with a unanimous vote of 6-0-0.

Old Business – JCR Construction Building Plan

Members Sitting for this Discussion: Jonathan Wood; Carolyn Matthews; Bill Hoitt; Gretchen Gott; Bill Cantwell; Jim Kent.

Mr. Cartier Creveling noted that JCR Construction received site plan approval from the Planning Board for a fabric building on May 07, 2009. He noted this week, the applicant came in to apply for a building permit, and requested that the building be stick-built rather than a fabric material. Additionally, the applicant is seeking to have an office-space addition to the building. He noted that the applicant told him the use of the building will remain the same in that it will be used for storage. He added the applicant also informed him he's spoken with Fire Chief Pratt about not having to install a sprinkler system, which Mr. Pratt is ok with, though Mr. Cartier Creveling has not heard or seen anything from Mr. Pratt about this.

Mr. Cartier Creveling asked if the Planning Board would like to see the applicant again, or if the Board would rather have the Technical Review Committee address these changes.

Mr. Kent asked if the elevation of the stick-built structure differs from that of the fabric structure. Mr. Cartier Creveling stated he does not know the elevation of the fabric structure, but the stick-built structure is proposed to be 31 feet in height.

Ms. Gott stated she would like to see the applicant before the Board at a noticed public hearing.

Mr. Cantwell asked if, at the least, the office area would have a sprinkler system. Mr. Cartier Creveling replied yes.

Ms. Matthews stated she would like the opportunity to review the site walk minutes before deciding on this issue.

Mr. Hoitt asked if the difference in building type will lead to additional hydrants being installed. Mr. Cartier Creveling stated he does not know.

Mr. Wood stated he would like to see the applicant before the Board for an amendment to the site plan.

Old Business – Existing Excavation Sites

Members Sitting for this Discussion: Jonathan Wood; Carolyn Matthews; Bill Hoitt; Gretchen Gott; Bill Cantwell; Jim Kent.

Mr. Cartier Creveling stated he would like the Planning Board to put on record that the existing excavation sites have permission to operate, but also to establish a deadline for which applications can be submitted, as one was never set.

Mr. Kent asked if any of the excavation site operators received copies of the new Regulations. Mr. Cartier Creveling replied they have copies of the Draft Regulations at this point, but not the final version. He reminded the Board that each site has two years to come into compliance with the new Regulations.

MOTION: Ms. Matthews made a motion, seconded by Mr. Hoitt, to reaffirm and extend permissions to operate to excavation sites owned by Raymond Sand & Gravel, LLC (Map 37, Lot 10); Waldoborough, LLC (Map 22, Lot 15); and Candia South Branch Brook, LLC (Map 38, Lot 34). The aforementioned sites can continue to operate under the conditions of their previous permits, in accordance with the initial vote taken October 22, 2009, and the subsequent votes on January 21, 2010 and April 01, 2010 until August 30, 2010 or the date upon which a new permit is issued, whichever occurs first. Furthermore, the deadline for receipt of new applications by the Community Development Department shall be July 09, 2010. The motion carried with a vote of 5-1-0, with Ms. Gott opposed for the same reasons she's stated throughout this process.

Public Hearing – I.C. Reed Site Plan

Continued from 04/15/2010; Application #2008-022 – An application for Site Plan Review has been submitted by Jones and Beach Engineers, Inc. on behalf of I.C. Reed & Sons, Inc. The applicant proposes to renovate an existing building for office space, and construct an associated parking area. Additionally, the applicant proposes to demolish the existing house located on Map 28-2, Lot 56, and relocate the private drive known as Evans Drive to this area. The previous location of Evans Drive will be partially demolished, and the remaining portion will be retained to service Map 28-2, Lot 53, with an easement granted for that lot's perpetual use. The applicant was granted a variance for this use on January 10, 2007 by the Zoning Board of Adjustment. The properties are shown on Raymond Tax Map 28-2, Lots 54, 55 and 56; 8 Evans Drive.

Members Sitting for this Hearing: Jonathan Wood; Carolyn Matthews; Bill Hoitt; Gretchen Gott; Bill Cantwell; Jim Kent.

Applicant/Agents Present: None.

Public in Attendance: None.

Mr. Price explained that, in speaking with Eric Weinrieb of Altus Engineering, he learned that Mr. Weinrieb has not yet completed his initial engineering review, as the applicant did not submit a complete package. He noted that Mr. Weinrieb informed him that his first review should be completed in a few days. Considering this, the applicant and Altus have agreed that a continuance to July 22 should allow enough time to not only have the initial review completed, but several subsequent back-and-forth discussions as well.

MOTION: Mr. Cantwell made a motion, seconded by Mr. Kent, to continue the public hearing for Application #2008-022 to July 22, 2010 at 7:00 p.m. at Raymond High School. The motion carried with a unanimous vote of 6-0-0.

Public Hearing – Granite Meadows

Application #2006-012: *A request has been received from PD Associates, LLC for a one (1) year extension of the site plan approval, originally granted by the Raymond Planning Board on June 28, 2007, for a project known as "Granite Meadows," which involves development within the Sewer Overlay District as represented on the original site plan application submitted on June 26, 2006. On June 5, 2008, this project received a one year extension establishing an approval expiration date of June 25, 2009. On June 11, 2009, this project received a one year extension establishing an approval expiration date of June 29, 2010. The property is shown on Raymond Tax Map 22, Lot 9; Old Manchester Road and Scribner Road.*

Members Sitting for this Hearing: *Jonathan Wood; Carolyn Matthews; Bill Hoitt; Gretchen Gott; Bill Cantwell; Jim Kent.*

Applicant/Agents in Attendance: *Elmer Pease, applicant and Henry Hyder, applicant's Legal Counsel.*

Public in Attendance: *None.*

Mr. Cartier Creveling stated that this is the third time that Mr. Pease has come before the Planning Board seeking an extension.

Mr. Wood asked if there have been any zoning changes since the project was originally approved that would impact the approval. Mr. Cartier Creveling replied there have not been.

Mr. Cantwell asked why the provisions of SB93 do not apply to this project. Mr. Cartier Creveling replied SB93 requires that a project have received its final approval – it does not consider conditional approval from the Planning Board.

Mr. Pease stated the time is coming due where another extension would be required. He stated despite his best efforts, he has not been able to entice a major retailer to the site at this time, and economic conditions are similar to where they were last year. He stated he is still at a standstill.

Ms. Gott asked for an update on the status of the sewer treatment testing occurring in Woodsville. Mr. Pease stated the testing was suspended this past winter due to problems. Re-testing will be occurring this coming winter. He stated that the State is waiting for the test data.

Mr. Hoitt asked if there has been any consideration of a regular septic system as opposed to the newer technology. Mr. Pease stated if he can get his technology tested and approved, then in the end, the Town may save itself about \$3,000,000.00. He stated it has been proven to work in warm weather tests, however the State is waiting for cold weather results before approving the technology.

Mr. Hoitt stated Exit 5 development and sewer treatment has been coming up a lot lately. He asked if Mr. Pease's process would speed up if Exit 5 went ahead. Mr. Pease stated he met with the Raymond Business and Economic Development Council last night. He added that while Exit 5 is mostly built-out and narrow, focus on this area is good, as it allows the Town to focus on in-fill development while larger users can concentrate on Exit 4.

PUBLIC COMMENT

There was no public comment.

Ms. Gott stated Page 5 of the Notice of Decision issued last year discussed off-site improvements. She noted that any plan suggesting pooled mitigation has not been accepted by the State. Mr. Pease stated the program needs to be finalized and accepted first, which is still being worked on. Ms. Gott asked if DES had any tougher regulations for wetlands permits present day than when the project was approved. Mr. Pease stated his wetlands scientist, Mark West, is working with the State on this.

The question was raised as to whether a one-year or two-year extension is being sought. Mr. Pease stated he tried asking for two years last June, but the Board only wanted to give a one-year extension. Mr. Cartier Creveling stated a two-year extension might be a benefit. Mr. Pease stated the extension is more a financial/economic necessity. He added that he is predicting another slow year economically, and a one-year extension is likely to result in his appearing before the Board again in June of 2011 requesting another one-year extension.

Ms. Matthews stated the abutters are notified each time Mr. Pease comes in requesting an extension. She added if nothing is anticipated to occur except for a basic update, then she sees no reason not to grant a two-year extension. She added updates can be given by staff. Mr. Cantwell stated he agrees with Ms. Matthews since zoning changes that have been implemented do not affect this project. He added the key component is sewer, and testing won't be complete until spring 2011. A two-year extension is reasonable.

Mr. Kent asked how an update from Mr. Pease can be scheduled because the Board would like information regarding the results of testing as soon as results become available. Mr. Cartier Creveling explained that Mr. Pease can update the Board as an old business item with no action being taken. Mr. Pease added he lives in Nottingham, and will be happy to come before the Board whenever they want.

Ms. Gott stated she is wondering if any changes at the DES level would affect the project. Mr. Cartier Creveling noted that Mr. Pease will have to comply with anything DES puts in place as he has not gone far enough in the permitting process.

Ms. Gott asked what kind of precedent a two-year extension would set, as she does not recall the board ever having granted a two-year extension before. Mr. Wood replied if SB 93 applied

to this project as originally thought, then Mr. Pease would have four years. He added he doesn't see that the Board is in danger of setting unwanted precedents here.

MOTION: Mr. Cantwell made a motion, seconded by Ms. Matthews, that Planning Board finds the applicant's reasons for the requested two (2) year extension are adequate, and that the Board agrees to grant a two (2) year extension to the applicant for Application #2006-012, otherwise known as the "Granite Meadows Site Plan," located on Raymond Tax Map 22, Lot 9, and to amend the Conditions of Approval and Notice of Decision as follows:

Item 1 of the Conditions of Approval shall read as follows:

1. The conditions of approval designated as conditions precedent must be fulfilled by June 28, 2012, unless otherwise specified or this approval shall become null and void. By virtue of the first extension granted on June 05, 2008, the extension granted June 11, 2009, and the extension granted June 17, 2010, Article IV, Section II, Item 5 of the Town of Raymond Site Plan Review Regulations, "Abandonment of Plan," which allows only a 60-day extension, has been waived to allow the time frames defined by the extension granted June 17, 2010. The following are conditions precedent:

Additionally, the footnotes added to Items 2 and 3 of the Conditions of Approval on June 11, 2009, each of which read as follows, are removed:

- ¹ If SB-93 becomes law, the active and substantial development time frame in Item 2 above and the substantial completion time frame in Item 3 will be subject to the extended time frames outlined in SB-93. A copy of the approved language is attached.

Lastly, the Performance Agreement executed between the applicant and the Town of Raymond shall be revised to reflect the amendments approved by the Planning Board tonight, June 17, 2010.

The motion carried with a vote of 5-1-0, with Ms. Gott opposed.

Public Hearing – Thibeault Sand & Gravel, LLC Excavation Permit

Application #2010-005: *An application for an earth excavation permit has been submitted by Thibeault Sand & Gravel, LLC. The applicant is proposing a sand and gravel excavation to occur on Raymond Tax Map 32, Lots 43 & 68, Map 37, Lot 2, and Map 38, Lots 12 & 13; accessed via NH Route 27.*

Ms. Matthews stated she is going to recuse herself from this case. She noted she feels she could be fair, however the Raymond Code of Ethics requires a Board member to recuse upon the appearance of a conflict of interest.

Members Sitting for this Hearing: *Jonathan Wood; Bill Hoitt; Gretchen Gott; Bill Cantwell; Jim Kent.*

Applicant/Agents in Attendance: *Vincent Iacozzi, Thibeault Sand & Gravel, LLC.*

Public in Attendance: *Clearwater Estates Condominium Association; Don & Janice Hedman; Siva Picaiah; Robert & Theresa Harrison; Bowman Revocable Trust Agreement; Brian & Jane Gilmore; Patricia Dempsey; Donald & Carol Cunningham; Ernest Champagne.*

Mr. Iacozzi stated he is here tonight seeking reinstatement of the original excavation permit that was approved by the Raymond Planning Board by unanimous vote on June 09, 2005, and subsequently vacated by the Rockingham County Superior Court April 23, 2009.

Mr. Iacozzi explained that the abutter information on the plans has been updated. He added that some notes still need to be updated, per staff comments. Ultimately, he stated he believes a valid, buildable plan for excavation and restoration of the entire site has been submitted.

Mr. Cartier Creveling stated he has discussed the plan with Legal Counsel, and added that Mr. Iacozzi met with staff earlier this week in the office. He stated he tried to see what was available in the existing record that could be utilized for this application.

Mr. Cartier Creveling next quoted the last paragraph on page 19 of the Superior Court Decision:

Given the lack of validity of the 2005 proceedings, the Court agrees with the petitioners that the 2007 proceedings needed to afford the abutters all the procedural protections of, and all the review required for, a new or amended application. The Court need not at this time rule on the legality of the Town's applied limited renewal procedure under RSA 155-E, since, in order to be valid in this case, the procedure and review at issue cannot be a limited renewal review, but rather must be a procedure that meets the review or evaluation requirements imposed for an initial or original permit application. [...]

Mr. Cartier Creveling continued, next reviewing the last paragraph on page 22 of the Court Decision, which carries over to page 23:

*The Court **VACATES** the Board's approval of the 2007 application and **REMANDS** the matter to the Board so that it may consider, review and evaluate the 2007 Application as an original or new application to see if it meets the requirements of RSA chapter 155-E and the EER, and to follow through in regard to any regional impact concerns or review.*

On remand, the Board may consider the conditions to which the Town and TSG had agreed over the course of months of negotiation, set forth in writings such as the 2006 Excavation Permit Agreement. The Court's ruling that the 2005 permit was void for lack of notice to abutters does not vitiate the potential for the parties to benefit from the energy, work and compromise that went into those agreements. [...]

Mr. Cartier Creveling stated that Legal Counsel has advised this application needs to be reviewed under the 2001 Excavation Regulations. He added it appears the Court said that the Board needs to evaluate this as a new application. He added he takes the above references to read that the Board needs to determine what is missing, what has been submitted, take comment and render a decision.

Mr. Cartier Creveling stated the Town's experts and Legal Counsel hammered out agreements with the applicant 5 years ago (Conservation Easement Deed, Declaration of Restrictive Covenants, Right of First Refusal). Each side came up with safeguards that they felt addressed technical issues.

Mr. Cartier Creveling added that he did not find anything in old minutes suggesting or indicating that waivers were granted to the applicant. He added staff did a basic review outlining some procedural areas that might need attention, which Mr. Iacozzi helped to clarify in his meeting with staff this week.

Lastly, Mr. Cartier Creveling stated this process gives abutters who were not notified in 2005 the full benefit of a hearing process.

Mr. Wood stated he would like to take up the issue of Regional Impact.

REGIONAL IMPACT CRITERIA

1. *Could the proposal be construed as having the potential for regional impact based upon:*
 - a. *Relative size or number of dwelling units as compared with existing stock;*

Mr. Iacozzi replied NO because there is no development contemplated with this activity.

Mr. Wood polled the Board to see if the Board felt there is or is not regional impact in regards to item 1a:

POLL RESULTS

Mr. Kent – No
Ms. Gott – No
Mr. Hoitt – No
Mr. Cantwell – No
Mr. Wood – No

- b. *Proximity to the borders of a neighboring community;*

Mr. Iacozzi replied NO.

Mr. Wood polled the Board to see if the Board felt there is or is not regional impact in regards to item 1b:

POLL RESULTS

Mr. Kent – Yes
Ms. Gott – Yes
Mr. Hoitt – No
Mr. Cantwell – No
Mr. Wood – Yes

- c. *Transportation networks;*

Mr. Iacozzi replied NO, adding he doesn't believe there are any impacts as has been shown by traffic studies. Mr. Cartier Creveling added that the traffic study completed for the quarry applies here as the numbers are the exact same.

Mr. Wood polled the Board to see if the Board felt there is or is not regional impact in regards to item 1c:

POLL RESULTS

Mr. Kent – Yes

Ms. Gott – Yes

Mr. Hoitt – No

Mr. Cantwell – No

Mr. Wood – No

d. Anticipated emissions such as light, noise, smoke, odors or particles;

Mr. Iacozzi replied NO adding that they are only excavating sand and gravel. Noise is only from machines. Any dust generation will be mitigated through watering.

Mr. Wood polled the Board to see if the Board felt there is or is not regional impact in regards to item 1d:

POLL RESULTS

Mr. Kent – No

Ms. Gott – No

Mr. Hoitt – No

Mr. Cantwell – No

Mr. Wood – Yes, because dust already impacts the neighborhood due to the condition of the site today.

e. Proximity to aquifers or surface waters which transcend municipal boundaries;

Mr. Iacozzi replied NO their operation is wholly located in Raymond and abuts and aquifer.

Mr. Wood polled the Board to see if the Board felt there is or is not regional impact in regards to item 1e:

POLL RESULTS

Mr. Kent – Yes

Ms. Gott – Yes

Mr. Hoitt – No

Mr. Cantwell – Yes

Mr. Wood – Yes

f. Shared facilities such as schools and solid waste disposal facilities.

Mr. Iacozzi replied NO.

Mr. Wood polled the Board to see if the Board felt there is or is not regional impact in regards to item 1f:

POLL RESULTS

Mr. Kent – No
Ms. Gott – No
Mr. Hoitt – No
Mr. Cantwell – No
Mr. Wood – No

2. *Are there any other factors not identified in 1a – f which should be considered in making a regional impact determination?*

Mr. Iacozzi replied NO.

Mr. Wood polled the Board to see if the Board felt there is or is not regional impact in regards to question 2:

POLL RESULTS

Mr. Kent – No
Ms. Gott – No
Mr. Hoitt – No
Mr. Cantwell – No
Mr. Wood – No

MOTION: Ms. Gott made a motion, seconded by Mr. Kent, that the Planning Board declares Application #2010-005 to have regional impact. The Town of Candia and the Southern NH Planning Commission are to be notified. The motion carried with a vote of 4-1-0, with Mr. Hoitt opposed.

Mr. Wood asked when Thibeault Sand & Gravel acquired the site. Mr. Iacozzi stated they obtained initial interests in 1988.

Mr. Wood asked when the last commercial quantity of gravel was removed from the site. Mr. Iacozzi replied he believes May 2007.

Ms. Gott asked why it was determined that this application needs to be reviewed under the 2001 Excavation Regulations, and not the Excavation Regulations adopted May 20, 2010. Mr. Cartier Creveling stated the Judge remanded the 2007 application back to the Planning Board. The Court Order does not say the 2001 Regulations must be used; that idea came from Legal Counsel. Ms. Gott stated she has questions that would require a non-meeting with Legal Counsel.

Mr. Iacozzi stated the original missed abutters were from 2005. By the time the negotiations ended and documents were recorded, it was March 2006. The 2005 permit expired in June 2007, so Thibeault applied for renewal using the same abutter list from 2005 in 2007, meaning the same abutters were missing.

Mr. Wood stated he, too, would like to have a non-meeting with Legal Counsel to discuss issues and ask questions.

Mr. Cantwell stated he only sees a reclamation plan for one of the ponds. Mr. Iacozzi pointed out the second pond's reclamation plan. Mr. Cantwell stated plantings are only being shown on one of the ponds. He asked if this is the intent. Mr. Iacozzi replied only one pond is wide open; the other pond is 20-25 feet back from the tree line, and there is a wildflower seed mix in the area between the pond's edge and the tree line.

Mr. Wood asked how Thibeault currently complied with RSA 155-e. Mr. Iacozzi replied they are not in compliance, adding that this plan is the reclamation plan for the entire open area. He stated when the permit was thrown out, that left Thibeault in a state of limbo. Mr. Wood asked if the plan were to be approved this summer, when would work begin. Mr. Iacozzi stated this fall, when the water table is the lowest.

Ms. Gott asked why reclamation was not started years ago. Mr. Iacozzi replied he can not answer that question, as it was a decision made by someone other than himself.

Mr. Cantwell asked what it would take to stake out the pond areas for site walk purposes. Mr. Iacozzi replied likely a couple of days for surveying.

PUBLIC COMMENT

Ron Bowman stated Mr. Iacozzi stated there would be no substantial dust and noise other than machinery noise. What will the noise and dust be like.

Jane Gilmore stated she does not like the beeping noise trucks make when they back up. She asked if there would be a way that the beeping noise could be shut off.

Don Hedman asked how many truck trips are taking place, and asked for clarification on the hours of operation.

Patricia Dempsey asked what is going on. She stated first the applicant was asking for a quarry, and now is asking for sand and gravel excavation. Mr. Wood clarified that there is no blasting occurring with this application. He added that the quarry application sought to excavate bedrock, whereas with this application is for removal of sand and gravel.

Theresa Harrison stated the applicant stopped excavating in 2007, adding she assumed there was no more material for them to remove. She added she does not understand what they are asking for. Mr. Wood explained the applicant is requesting permission to dig below the current level, which would be six feet below the high water table. He added the applicant is seeking to create two ponds to remove additional gravel. Mr. Iacozzi added that they waited because things were held up as a result of the Court proceedings.

Carolyn Matthews, speaking as a citizen, noted that the vacated excavation permit includes references to pre-blast surveys. She asked if the board would consider adding a condition of approval addressing pre-blast surveys, should the need for blasting arise, especially since it was included in the vacated permit.

The Planning Board discussed setting a date for a non-meeting with Legal Counsel. It was agreed that a non-meeting should be held on July 29, 2010.

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Next, the Board discussed details regarding a site walk. Ms. Gott asked if a site walk is held, will abutters be allowed. Mr. Iacozzi replied they would not be. Ms. Gott replied then it is not a public meeting, and that can't happen, as they need to be public meetings and the public has to be allowed. She asked if a small group, perhaps limited to eight abutters, would be allowed. Mr. Iacozzi stated he will check to see if a small group will be allowed, if they sign a waiver for liability purposes. Mr. Cartier Creveling stated he would need to check with Legal Counsel to see if this sort of thing would be allowed.

Mr. Wood polled the Board to determine if the Board felt a site walk was necessary.

POLL RESULTS

Mr. Kent – Yes

Ms. Gott – Yes

Mr. Hoitt – Abstain

Mr. Cantwell – Yes

Mr. Wood – Yes

MOTION: Mr. Kent made a motion, seconded by Mr. Cantwell, to hold a site walk on July 01, 2010 at 6:00 p.m. Board members will meet at the site. The motion carried with a vote of 3-1-1, with Mr. Hoitt opposed and Ms. Gott abstaining.

MOTION: Mr. Cantwell made a motion, seconded by Mr. Kent, to continue the public hearing for Application #2010-005 to August 05, 2010 at 7:00 p.m. at Raymond High School. The motion carried with a unanimous vote of 5-0-0.

Ms. Matthews returned to her seat for the remainder of the meeting.

Other Business

Members Sitting for this Discussion: Jonathan Wood; Carolyn Matthews; Bill Hoitt; Gretchen Gott; Bill Cantwell; Jim Kent.

The Planning Board heard reports from its members serving on other Boards or Committees.

Adjournment

MOTION: Mr. Cantwell made a motion, seconded by Mr. Hoitt, to adjourn. The motion carried with a unanimous vote of 6-0-0. The meeting adjourned at 9:16 p.m.

Respectfully submitted,

Robert Price
Planning Technician