

Raymond Planning Board Minutes

May 21, 2009

Approved 06/04/09

Place: Raymond High School; Media Center

Call to Order: 6:30 p.m.

Members Present: Jonathan Wood, Chairman; Carolyn Matthews, Vice Chairman; Jim Kent, Secretary; Bill Hoitt, Selectmen's Ex-Officio; Bill Cantwell, Gretchen Gott, Doug Vogel.

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

Pledge of Allegiance

Approval of Minutes

Members Sitting for Approval of Minutes: Jonathan Wood, Carolyn Matthews, Jim Kent, Gretchen Gott, Bill Cantwell, Doug Vogel.

MOTION: Jim Kent made a motion to approve the minutes of April 30, 2009 as amended. Carolyn Matthews seconded. The motion passed with a vote of 3-0-3, with Gretchen Gott, Doug Vogel and Bill Cantwell abstaining.

Community Development Director Cartier Creveling requested that the Board move the old business portion of the agenda to right now due to the fact that Carolyn Matthews will recuse from the rest of the meeting. That way, she can participate in this portion of the agenda.

MOTION: Gretchen Gott made a motion to move the Old Business section of the agenda immediately after the Approval of Minutes, and immediately before the Public Hearing. Bill Cantwell seconded. The motion passed with a unanimous vote of 6-0-0.

Old Business – FairPoint Communications Site Plan

Board action regarding FairPoint Communications, Inc. Site Plan differences for the telecommunications facility located on Raymond Tax Map 28-3, Lot 75; Floral Avenue.

Members Sitting for this Discussion: Jonathan Wood, Carolyn Matthews, Jim Kent, Gretchen Gott, Bill Cantwell, Doug Vogel.

Community Development Director Cartier Creveling stated Fairpoint Communications has completed work on the telecommunications switching station located on Floral Avenue. However, during final inspection, it was noted some items on the ground differ slightly from the plan. Instead of planting grass, they installed crushed stone likely in an effort to reduce maintenance at the site. He explained that staff has no issue with how the site turned out. He stated the Board needs to determine if they find the change acceptable.

Carolyn Matthews asked what will happen to the gravel if the site floods again. Mr. Cartier Creveling explained that the flood water in this area does not have any velocity behind it, it just goes up and goes down.

Gretchen Gott asked if the abutters have made any comments about the site. Mr. Cartier Creveling stated Code Enforcement Officer Richard Mailhot reported to him that he has not received a single complaint about the site.

Jim Kent stated soil will collect between the stone, and eventually grass will begin to sprout. Mr. Cartier Creveling stated the Board can give an “ok” based upon the provision of a maintenance plan to prevent that from happening.

Gretchen Gott asked if any other items on Public Works Director Dennis McCarthy’s original memo needed to be addressed. Mr. Cartier Creveling replied all the other items have been addressed. Ms. Gott expressed frustration with the fact that, on several occasions, something has been said, and something else has taken place, with this site.

PUBLIC COMMENT

There was no public comment.

MOTION: Carolyn Matthews made a motion for the Planning Board to accept the installation of gravel in lieu of the sod indicated on the approved site plan with the provision that the applicant add a note to the plan regarding maintenance of the crushed stone. Additionally, the applicant shall provide the Town with an as-built plan reflecting the current conditions. Doug Vogel seconded for discussion. DISCUSSION: Doug Vogel asked why a maintenance plan is being requested now when it wasn’t originally. He also asked who would be responsible for enforcing the plan. Ms. Matthews stated she does not think it would be a good idea to set a precedent to not abide by an approved site plan, which is why a maintenance plan should be required. Mr. Cartier Creveling clarified that Code Enforcement Officer Richard Mailhot would be responsible for enforcing the plan. VOTE ON THE MOTION: The motion passed with a vote of 4-2-0, with Gretchen Gott and Doug Vogel opposed.

NOTE: Bill Hoitt arrived to the meeting at this time.

NOTE: Carolyn Matthews stated she must recuse herself from the next case.

Public Hearing – Thibeault Quarry

Continued from 04/02/2009; Application #2007-002: An application for an Amended Excavation Plan has been submitted by Thibeault Sand & Gravel, LLC, on land known as Nashua River Land Corporation, to amend their Excavation Permit to add a quarrying operation. The properties are shown on Raymond Tax Map 32, Lots 43 and 68; Map 37, Lot 2; and Map 38, Lots 12 and 13; accessed via NH State Route 27.

Members Sitting for this Hearing: Jonathan Wood, Jim Kent, Gretchen Gott, Bill Cantwell, Doug Vogel, Bill Hoitt.

Jonathan Wood disclosed that he is an independent contractor working for Crafts Appraisal Associates. He noted various associates of Crafts Appraisals have done work for the applicant. He stated he has not discussed the content of their work with these individuals. As a result, he feels this does not create a bias on his part toward the applicant, allowing him to serve on this case.

Community Development Director Cartier Creveling explained the Superior Court issued a ruling regarding the excavation permit – that ruling vacated the original permit. He stated this hearing, per discussions with Counsel, should be continued because Counsel has not yet had the opportunity to meet with the Board to discuss the ruling.

Jonathan Wood asked if the ruling of the Court has been appealed. Legal Counsel Sharon Somers stated Thibeault Sand & Gravel filed a Motion to Reconsider with the Court, which was denied on May 19. The appeal period runs 30 days from that, so it will expire June 19. She recommended continuing the hearing to a date beyond the appeal period.

John Bisson, Counsel for Thibeault Sand & Gravel stated in order to preserve the record, they must ask Chairman Wood to recuse from this case. He added an email was sent yesterday indicating that the Chairman has decided this case is being continued tonight. He stated in his view, this is completely inappropriate to prejudge the issue of continuance. Mr. Bisson also added this request is in addition to the reasons Vince Iacozzi of Thibeault Sand & Gravel has given in the past when requesting Mr. Wood's recusal. Mr. Wood replied he acknowledges the applicant's request for his recusal, and does not hold any prejudice against the applicant for their request, however he will not recuse. Mr. Wood added he did not receive the email which Mr. Bisson is referring to, adding it is the Board's decision, not his alone, to continue the hearing.

Ms. Somers stated several weeks ago, the Board received a request to continue tonight's hearing from Attorney John Vetne. She stated she issued an Attorney/Client correspondence on this issue, and met without Counsel on this issue. She stated Mr. Cartier Creveling indicated to her that the Board wanted to continue the hearing, which she communicated to Mr. Bisson and Mr. Vetne. She noted that Mr. Vetne did respond, but does not know why he responded in the manner which he did.

Mr. Bisson, moving on, stated there is no question that the abutters were properly notified of the quarry hearings. He added that the abutters have had several opportunities to speak; no one has ever shut them down. Mr. Bisson stated this application has been deliberately kept separate from the excavation application. He noted the Judge suggests in his decision that the quarry application is separate from the excavation application. Mr. Bisson asked the purpose of continuing the hearing again, adding that the Board has all the information they need to make a decision.

Mr. Bisson added that he has prepared a written finding of fact for the Board, and requested that the Board respond to it. Lastly, Mr. Bisson submitted, on behalf of Mr. Iacozzi, the Board's requested Appraisal Study.

PUBLIC COMMENT

John Vetne stated the abutters are not “public.” They are full parties to this application as Thibeault Sand & Gravel is. They are entitled to all the same due process and substantive consideration which Thibeault Sand & Gravel is entitled to. He added abutter comments and testimony is not simply a formality. Mr. Vetne went on to say he has not been provided a copy of the Appraisal Study, which was submitted to the Board tonight. He stated the record is not complete once Thibeault submits items to the Board. The record is complete when the abutters have a chance to review, digest and rebut those submittals.

Fred Kelly, Chairman of the Town of Candia Board of Selectmen, stated the Town of Candia is unhappy with this application. They feel their Town will be negatively impacted with its passage. He noted one of Candia’s attorneys has been attending the court proceedings, and added that the Town of Candia is watching this application closely.

Vince Iacozzi stated all requests made by Thibeault Sand & Gravel have been made in writing, and have been submitted to Mr. Cartier Creveling, and have been distributed to the Board. For example, in October 2008, Mr. Iacozzi stated he requested, in writing, that the Board look at the requirements poised by the NH Department of Environmental Services. The Board did not respond until February 2009.

Sharon Somers stated the findings of fact submitted to the Board tonight, which are for the substance of the case, do need to be reviewed and responded to at a public hearing. Their submittal is an effort on the part of the applicant to frame the questions they would like the Board to answer as part of the substantive review of the application.

Jonathan Wood informed Board member Bill Hoitt that there are several aspects of this case that may end up before the Board of Selectmen. He informed him that if he were to sit on the Planning Board to make a decision regarding these items, then he will need to recuse himself from his Selectmen’s seat. Ms. Somers stated she will elaborate on this topic further during the Non-Meeting with Counsel scheduled for later this evening.

The Board held a brief discussion regarding the date the case should be continued to. Some members expressed concern with continuing the case to a date within the appeal period. The Board weighed the possibility of continuing to June 25, which is outside the appeal period, but is an extra meeting which was not scheduled, or to July 9, which is the next regular meeting date after the appeal period.

MOTION: Jonathan Wood made a motion to continue this hearing to July 9, 2009 at 7:00 p.m. at Raymond High School. Bill Cantwell seconded. The motion passed with a vote of 4-2-0, with Gretchen Gott and Bill Hoitt opposed.

The Board clarified for those in attendance and those watching that the meeting time will be 7:00, not 6:30, as has been the custom for this applicant.

Other Business – Staff Update

The Planning Board heard reports from its members serving on other various boards and committees.

Adjournment

MOTION: Bill Cantwell made a motion to adjourn. Jim Kent seconded. The motion passed with a unanimous vote of 6-0-0. The meeting adjourned at 7:39 p.m.

Respectfully Submitted,

Robert Price
Planning Technician