

**Raymond Planning Board Minutes  
February 04, 2010**

**Approved 02/11/2010**

**Place:** Raymond High School; Media Center  
**Call to Order:** 7:01 p.m.

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

**Staff Present:** Walter Mitchell, Legal Counsel; 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; Jim Kent; Bill Hoitt; Gretchen Gott; Bill Cantwell; Doug Vogel.*

**MOTION:** Jim Kent made a motion to approve the minutes of January 28, 2010 as drafted. Bill Hoitt seconded. The motion passed with a vote of 5-0-2, with Bill Cantwell and Doug Vogel abstaining.

**Public Hearing – “Lamprey Falls” Conservation Subdivision**

*Continued from 12/03/2009; Application #2006-033 – An application for a 9 lot Conservation Subdivision has been submitted by REI Development Company, LLC. The applicant proposes to construct nine duplex homes, totaling 18 residential units. The applicant was granted both a use variance to construct duplex homes within a conservation subdivision, and an area variance allowing the placement of 18 dwelling units on 21.7 acres of land, by the Raymond Zoning Board of Adjustment on January 9, 2008. The property is shown on Raymond Tax Map 44, Lot 13; surrounding and behind 17 Critchett Road. **\*\*Note\*\*** The applicant has not yet been before the Technical Review Committee.\*\**

*Bill Cantwell announced he must recuse himself from this hearing, as he is biased against this application.*

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

Community Development Director Cartier Creveling noted that staff has still not yet been provided with updated plans, and as such, no date has yet been set for a hearing before the Technical Review Committee.

Lee Tessier of REI Development Company, LLC stated his partner, Allan Clark, recently underwent a surgical procedure and suffered some serious complications as a result. He noted Mr. Clark will be unavailable for the next several weeks while he recovers.

Mr. Tessier stated he has the new plans with him tonight, and is ready to submit them to the Board. He added that he also has a copy of the Alteration of Terrain application, which was recently submitted to the State.

Mr. Tessier explained the reason for their delay was that, since the last meeting, they learned that the Department of Environmental Services had an issue with the plans which needed to be addressed. This issue has been addressed, and the State issued their approval in late December 2009. Once that approval was secured, they then commenced final engineering of the plans. Mr. Tessier noted that, to them, it made sense to ensure everything was approvable at the State level prior to going forward to the Technical Review Committee. He added that the State review process is a slow one.

Jonathan Wood stated this application was submitted to the Town in 2006, and another new set of zoning changes is about to be voted upon. He stated he appreciates the fact that the applicant's plans are conforming to all the new State and Federal practices (i.e. new Alteration of Terrain regulations). He asked if the applicant was willing to comply with all the zoning changes that have taken place at the local level since the application was originally filed.

Gretchen Gott stated she appreciates what Mr. Wood is attempting to accomplish, however, she would like to allow the applicant time to review all the zoning changes that will likely have an impact on their plans prior to making a decision. She stated her overall preference would be for the applicant to withdraw their application without prejudice, and to have them re-apply, so everything is clean. She stated she would also entertain the thought of waiving application fees.

Carolyn Matthews stated she agrees with Ms. Gott's suggestion, and asked for the applicant's comments.

Mr. Tessier stated the application has been active for a long time. He stated he is uncertain of the legal ramifications of withdrawing the application. He stated there is no point in withdrawing the application, as the new plans are here with him tonight, and they are ready to proceed.

Mr. Wood asked what the date is on the new plans. Mr. Tessier stated without looking he is unsure, but estimated around January 26, 2010. Mr. Wood replied he is concerned that the plans were not submitted a week ago when they were apparently ready at that time.

Mr. Tessier stated the plans were not submitted last week because Mr. Clark's operation was two weeks ago. Once the complications arose, everything was stopped on their end.

Mr. Wood stated he is concerned with the lengthy trail that exists from when the application was submitted to the present day. He stated he feels it is appropriate to comply with the current zoning. He noted compliance with current zoning would not impact the fact that the applicant has received variances to construct duplexes, and additional units.

Bill Hoitt stated he does not want the applicant to withdraw his application and start over; he would prefer to move things forward.

Jim Kent stated he does not believe the Board has any legal standing to force compliance with new zoning on the applicant.

Doug Vogel stated he agrees with Mr. Hoitt – that the applicant should be allowed to submit the new plans and get going with the Technical Review Committee.

Mr. Wood stated he sees three paths here:

1. The applicant chooses to withdraw his plans and resubmit. He noted Ms. Gott's suggestion of a waiver of application fees.
2. The Planning Board denies the application without prejudice, and gives their reasoning.
3. The Board opts to keep things alive and forge ahead, but continuances should not be allowed too far apart.

Mr. Tessier stated he has no issue with the Technical Review Committee reviewing the plans as though they needed to meet current zoning. He added he is not adverse to complying with current zoning so long as the variances received for duplexes and density remain in tact. He stated as for withdrawal, he again noted he would like to receive advice from his legal counsel, and also speak with his partner, Mr. Clark, prior to making that decision.

#### PUBLIC COMMENT

Richard Levine of 36 Deerfield Road stated he and his wife, Ellen, have several questions that have gone unanswered. They are in regards to RSA 155:E, and the grandfathered status of the former gravel pit on this site. Mr. Cartier Creveling stated Mr. & Mrs. Levine have posed these questions to staff, and he asked them of Legal Counsel. He noted he received a response back, and with the Board's permission, he will share that response with the Levine's after the meeting. The Board agreed for Mr. Cartier Creveling to share Legal Counsel's response.

Ms. Levine stated the last time the applicant physically appeared before the Planning Board was in August 2009. There have been two continued hearings since then. She stated they assumed, because the applicant had not yet been before the Technical Review Committee, which the Planning Board required in August, that the applicant would not be present tonight. She stated the only reason she found out that the

applicant would be attending tonight's meeting was by chance in speaking to Planning Technician Price yesterday. She stated she is very concerned that the abutters are being completely lost in this process.

Bill Cantwell, speaking as a citizen, requested that the Board have more discussion regarding denial of the application without prejudice. He stated this would clean the file so everything can start fresh, with new notification being sent to abutters.

Mr. Kent stated to him, there does not appear to be a difference in denial without prejudice versus the applicant's willingness to comply with updated zoning. The end result will be the same.

Mr. Hoitt asked if the project is denied without prejudice, and the Board agrees to waive application fees, will this set a precedent. Mr. Wood suggested placing a time limit on how long the applicant has before they will be required to pay a full application fee.

Ms. Gott stated denial without prejudice is a good option because this application has been continued repeatedly, only one of the partners is in attendance tonight, and will be out for an undetermined amount of time.

Mr. Vogel stated Mr. Clark's absence is not a good reason for denial. He added as for the fact that the application has been around for a long time, he is unaware of any policy that prevents this. He noted the applicant has granted the Board several extensions to the 65-day review period.

**MOTION:** Gretchen Gott made a motion to deny Application #2006-033, an application for a nine-lot conservation subdivision submitted by REI Development Company, LLC, without prejudice. If the applicant resubmits the application prior to April 08, 2010, then application fees shall be waived. If the applicant resubmits the application after April 08, 2010, then the full application fee shall apply. The Planning Board is denying this application without prejudice because:

1. There have been a significant number of continued hearings since the application first appeared before the Planning Board;
2. Revised plans were not submitted in a timely fashion for tonight's hearing;
3. The Board is concerned that four years is too long a time to give grace from zoning changes; and
4. Mr. Tessier's partner, Mr. Clark, is not in attendance tonight, and Mr. Tessier's has stressed he would need to consult his partner before he could offer the Board assurance that he could comply with new Zoning Regulations.

Jim Kent seconded for discussion. **DISCUSSION:** Doug Vogel stated he simply can not agree with the rationale for denial without prejudice. In regards to "significant number of continued hearings," the term significant can not be defined. He stated he has already voiced his concern on using Mr. Clark's absence as a reason for denial. He

stated there are other ways than via denial to handle the issues with zoning. Gretchen Gott stated the Board can't fairly ask the applicant to abide by zoning at this meeting as there are changes he does not know about. She added there have been a significant number of changes that have taken place in the last four years. VOTE ON THE MOTION: The motion passed with a vote of 4-2-0, with Bill Hoitt and Doug Vogel opposed.

*Bill Cantwell returned to his seat at this time.*

**Public Hearing – Thibeault Quarry**

*Continued from 01/07/2010; Application #2007-002 – An application for an Excavation Plan has been submitted by Thibeault Sand & Gravel, LLC, on land known as Nashua River Land Corporation, for 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.*

*Carolyn Matthews stated she must recuse herself from this hearing. Ms. Matthews left the meeting and did not return.*

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

The Planning Board resumed its deliberations by going through the Earth Excavation Regulations:

**SECTION XIV: APPLICATION FOR EXCAVATION**

**C. SITE STANDARDS AND REQUIREMENTS (Raymond Section V)**

*As part of the application for an excavation permit, the applicant shall maintain the site according to the following standards. The applicant may request, in writing a waiver, to one or more of these site standards and conditions.*

**6. Waste Disposal**

*No disposal of any waste material, including solid and/or hazardous waste, septage, dredge spoils, or organic waste and debris, shall be undertaken on the excavation site without appropriate State approval under RSA 149:M.1 or other appropriate State regulations.*

**7. Vehicular Barrier**

*A barrier to prohibit vehicular access when the pit is not in operation shall be required.*

8. *Hours of Operation*  
*Start-up time for all machinery associated with a gravel or sand pit and removal of material from the site shall be no earlier than seven a.m. (7:00 a.m.); termination of removal from the site shall be no later than four-thirty p.m. (4:30 p.m.) and all processing must be shut down by six p.m. (6:00 p.m.) These operating hours shall be for Monday through Friday. No operation shall take place on Saturdays, Sundays and Town Holidays. (6/00)*
9. *Dust Control*  
*Dust control measures will be instituted at the direction of the Planning Board or its duly authorized agent, where necessary, to protect from nuisance abutting property owners.*
10. *Road Repair*  
*The applicant shall be held liable for the repair of Town-maintained roads which are damaged as a result of hauling earth from the site. The Planning Board shall require the submission of performance security, according to the provisions of Section VI of these regulations, to insure adequate repair of damaged road segments following site restoration.*
11. *Maintenance of Traffic*  
*It shall be the applicants responsibility to provide and bear the cost for adequate means of traffic control at all hours of excavation operations. Said means shall include, but not be limited to, flag persons, signage, barriers, traffic details, warning flashers and lights, special duty police details and gates. Adequacy of traffic maintenance shall be determined by the Town Manager. Should the Town Manager determine that Traffic is not being adequately maintained, said determination shall be considered a violation of the Excavation Permit.*
12. *Maximum Excavation Limit*  
*Final excavation grade shall not be less than 6 feet to documented seasonal high water table.*
13. *Stump and Slash Disposal*  
*Stumps and slash generated during the site preparation shall be chipped on site and the resulting chips used on site for erosion control, or removed from the site, or:*  
  
*Stumps and slash may be land filled if said disposal site is approved by the State of New Hampshire in accordance with RSA 149:M.1 or current State regulation.*

14. *Tree Seedling Specification*
  - A. *Tree seedlings shall be two (2) year old plants or plants furnished under standard nursery order.*
  - B. *Seedlings without center buds and seedlings without pruned roots will not be accepted.*
  - C. *Seedlings shall be set out in accordance with accepted horticultural practices at eight (8) foot spacing in both directions.*
  
15. *Seeding Procedures*

*All seeding shall be accomplished in conformance with the State of New Hampshire, Department of Transportation, Standard Specifications for Road and Bridge Construction, latest edition, Section 644-Grass Seed; Sub-Sections 1.1 through 3.7.3 inclusive, or SCS Standards and Specifications. Certificates attesting to seed compliance with State and/or SCS specifications shall be mandatory.*
  
16. *Revegetation*
  - A. *All disturbed areas shall be spread with the original topsoil or sufficient topsoil to cover disturbed areas to a minimum depth of four (4) inches, when possible.*
  - B. *At a minimum, areas from which trees have been removed shall be replanted with white pine seedlings.*
  - C. *At a minimum, areas where low brush or grass has been removed shall either be planted with seedlings or seed with a seed mixture conforming to the State of New Hampshire Department of Public Works and Highways slope-seed mix, or SCS approved mixture.*
  
17. *Signage*
  - A. *All pits shall be properly identified by signs clearly stating name, owner, permit number.*
  - B. *Perimeter of pits shall be suitable posted with signs at a maximum 100 foot interval, notifying trespassers of potential danger.*
  
18. *Fuel Storage and Refueling*

*All fuel storage and refueling shall take place in a secure designated area constructed especially for said purpose. No underground storage of fuels will be allowed. Excavation Plan shall clearly show refueling area and facilities.*

In regards to the items above, the Board made the following comments:

6. Sheet 3, Note 4 addresses this. The Board agreed that the note should be amended to end with the word "site," and that all remaining text should be deleted.

7. Sheet 1, note 10 addresses this. Ms. Gott expressed concern with the fact that OHRV vehicles have found their way onto the site in the past, and she wants to see access controlled. Mr. Cartier Creveling noted this particular provision deals more with vehicular access from a roadway. The Board requires that the applicant remove all mentions of a “currently permitted excavation” from the plans, as the Superior Court vacated that approval.
8. Sheet 1, Note 9 addresses this. The Board discussed adding a condition for when the earliest blast should be allowed to occur. The Board agreed that the earliest blast should be allowed no earlier than 9:00 a.m, and wanted to see this addressed as a condition of approval.
9. Sheet 3, Note 6 addresses this. The Board agreed that they need to clearly state no fugitive dust shall leave the property, and that it is the applicant’s responsibility to comply with this requirement. It was also noted that the note should specify that water is the only measure allowed to be used on site, not just that it will be the only measure used, as this is a means to protect the aquifer.
10. Not applicable – there are no Town roads in the area being utilized for travel. In terms of requiring a bond for State roads, Walter Mitchell, the Board’s Legal Counsel, stated he has found nothing indicating the Board needs to do that.
11. Sheet 1, Note 13 addresses this.
12. Community Development Director Cartier Creveling stated he would have to get further clarification on this item and report back to the Board.
13. The Board agreed this was adequately addressed.
14. Sheet 6 has a series of notes regarding this item.
15. The Board requested a note to be added to sheet 6 that conforms with the Town’s Regulations.
16. The Board agreed that the plan notes adequately address this item.
17. Sheet 1, Note 14 addresses this. The Board discussed whether or not to require signage be posted on fencing. It was settled that the applicant should install signage wherever it can be affixed.
18. Sheet 1 shows the fueling area, and Notes 15 and 19 on Sheet 1 also address this.

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Next, the Planning Board began the process of going through a draft set of conditions of approval that were prepared by staff, in order to discuss and modify them as needed.

MOTION: Doug Vogel made a motion to continue this hearing to February 11, 2010 at 7:00 p.m. at Raymond High School. Bill Hoitt seconded. The motion passed with a unanimous vote of 6-0-0.

**Other Business**

Gretchen Gott brought up the topic of Deliberative Session on February 06, 2010, and how the zoning amendments were not being discussed.

MOTION: Gretchen Gott made a motion that the Planning Board express concern with the fact that zoning amendments will not be discussed at the Town Deliberative Session. Bill Hoitt seconded for discussion. DISCUSSION: Bill Cantwell stated he disagrees with this motion. He stated the Planning Board has its own process where zoning amendments are discussed. Zoning amendments can't be amended on the floor at deliberative session, anyway. VOTE ON THE MOTION: The motion failed with a vote of 2-3-1, with Doug Vogel, Bill Cantwell and Jonathan Wood opposed, and Jim Kent abstaining.

**Adjournment**

MOTION: Doug Vogel made a motion to adjourn. Bill Cantwell seconded. The motion passed with a unanimous vote of 6-0-0. The meeting adjourned at 10:12 p.m.

Respectfully submitted,

Robert Price  
Planning Technician