

TOWN OF THORNTON PLANNING BOARD

Approved on: 8/18/2014
PB Initials: TISO
Rec'd by Town Clerk on: 9/23/14
Town Clerk Initials: 202

Planning Board Meeting Minutes Thursday, August 21, 2014

CALL TO ORDER – SALUTE OF FLAG:

T. Phillips called the meeting to order at 6:01pm and led the pledge of allegiance.

ROLL CALL: The following members were present:

T. Phillips, Chairman	S. Babin, Vice Chairman	M. Peabody, Ex-Officio
F. Freeman, Member	S. Macintosh, Member	G. Kimball, Member
B. Regan, Member	F. Gunter, Alternate	

OTHER BUSINESS:

1. Fehm Subdivision: Stephanie Brown Fehm & Katharine Brown- Final Plat signature

Attorney Q. Blaine spoke on behalf of the property owners and explained that the property owners have changed their mind regarding including deed restrictions on the 4-Lot subdivision conditionally approved by the Planning Board on April 17, 2014.

J. March presented a new mylar along with 3 paper copies and stated that the note regarding the deed restrictions has been removed and that all other aspects of the plan remain the same.

The Board reviewed the plan and agreed the only change was the removal of the note regarding the deed restrictions.

N. Decoteau stated the previous mylar was signed but had not been recorded as the recording fee had not been paid.

J. March requested the Board sign the mylar.

MOTION: "To sign the revised mylar for the 4-Lot Subdivision submitted by J. March on behalf of property owners Stephanie Brown Fehm, Susan Norris & Katharine Brown for property identified as Map 17 Lot 19-15 located at 878 NH Rt. 49 which was conditionally approved on April 17, 2014 which included a list of 10 conditions. The Board agrees that condition #3 "A copy of any restrictive covenants to be attached to the deed shall be submitted" shall no longer be part of the approval."

Motion: F. Freeman

Second: G. Kimball

Discussion: None

Motion passes: 7– YES, 0-NO

T. Phillips signed the revised plans and dated them August 21, 2014.

J. March stated he would return to the town office the next day with the necessary recording fees.

2. G. Warren: Pemi River Campground- Change to Site Plan approval

G. Warren stated that he has obtained an elevation certificate from a licensed engineer which identifies an area on his property that is out of the floodplain which he would like permission to use as a place to locate the rental recreational vehicles approved on June 20, 2013.

T. Phillips reviewed the wording of the approval:

MOTION: "To approve the placement of a rental recreational vehicle on sites 11, 12, 13 and 14 of Recorded Plan # 14303 with the condition that they will be moved off site in compliance with the Floodplain Ordinance with the allowance for reconsideration of that requirement if new floodplain elevation information is provided."

T. Phillips stated that G. Warren should return to the Board with a plan showing the area that is identified as being out of the floodzone.

G. Warren asked if he would be required to follow the full site plan review process.

N. Decoteau provided a portion of the minutes from June 20, 2013 as follows:

"J. Paul-Hilliard asked if the allowance to reconsider the issue of where to move the units needed to be attached to the approval.

S. Babin stated it would preclude the applicant from having to go through site plan approval again."

The Board agreed that G. Warren would not be required to go through the full site plan review process but that he would need to submit a plan which clearly identifies the area that is not in the floodplain where the four units will be placed after the camping season.

PUBLIC HEARING - Excavation Permit Application

Public Hearing to consider an Excavation Application submitted by Brox Industries, Inc. for an Excavation Permit on property located off NH Rt. 49 identified as Tax Map 17 Lot 7-5 owned by Sunset Rock, LLC.

T. Phillips recused himself from the Public Hearing and S. Babin served as chairman for the Public Hearing.

S. Babin opened the Public Hearing at 6:30pm.

E. Stevenson, Manager at Brox Industries, Inc. presented the application.

The Board reviewed the checklist submitted and found that all items necessary were submitted.

The applicant did not request any waivers.

MOTION: "To accept the application as complete."

Motion: G. Kimball

Second: B. Regan

Discussion: None

Motion passes: 6- YES, 0-NO T. Phillips recused.

S. Babin opened the meeting for comments from the public.

No abutters were present and no comments were received.

MOTION: "To approve the application for an Excavation Permit submitted by Brox Industries, Inc. for property located off NH Rt. 49 identified as Tax Map 17 Lot 7-5 owned by Sunset Rock, LLC as follows:

- **Permit Expiration Date: September 1, 2017**
- **Hours of operation: 7:00am – 6:00 pm Monday through Friday and 8:00am – 12 noon on Saturday with no operation on Sunday.**
- **Processing machinery: Processing Machinery to be erected or maintained on the lot as approved within the operational plan and to be removed from the lot upon expiration of the permit.**
- **Blasting: None permitted for this site.**
- **On-site Storage – Solid Waste: None permitted for this site.**
- **Backhauling, Importing and Storage of Material: None permitted for this site.**
- **Crushing: Hours of operation for crushing are to be Monday – Friday 7:00am – 5:00pm with no crushing permitted on weekends or holidays.**
- **Posting of Bond/Surety: Amount of Bond to be posted for site is \$5,000.00 and it is the responsibility of the applicant to renew the bond throughout the duration of the permit.**

Motion: G. Kimball

Second: F. Freeman

Discussion: None

Motion passes: 6 – YES, 0-NO T. Phillips recused.

T. Phillips returned as the chairman.

OTHER BUSINESS:

3. Correspondence:

- a. N. Decoteau updated the Board on the status of the regional impact application being processed in the town of Lincoln for a cell tower.
N. Decoteau informed the Board that the Town of Lincoln is dealing with an Appeal of the Planning Board decision to approve the cell tower.
- b. Concerned Citizen Form: Blake Mt. Cottages
N. Decoteau provided the Planning Board a copy of a concerned citizen form regarding activity on Map 15 Lot 4-15 the Blake Mountain Motel/Cabins and stated a site visit is planned by health/safety officials.

4. Johnston Excavation Permit:

N. Decoteau provided information that the conditions of the Excavation Permit approval for L. Johnston at Map 15 Lot 4-69 have been satisfied.
The Board agreed.

5. One dwelling per acre per parcel information:

N. Decoteau stated that she had requested the Board of Selectmen communicate the direction they want the Planning Board to take with regard to more than one residential structure being on a single lot.

N. Decoteau stated that Chairman S. Morton suggested that a request to place more than one single family residence on a parcel of land would go through the Site Plan approval process.

N. Decoteau reviewed the Site Plan regulations which include the following points under the definition of "Development":

1. the erection, alteration or demolition of buildings or structures for the purpose of expanding or changing an existing use or creating a new use:
2. the expansion, change of use or intensification of an existing use, including an increase in the area of a lot, building or structure to be used, an increase in the residential density, or a change in the scope of business operations, even though no improvements may be required to the lot, building or structure.

N. Decoteau stated that Chairman S. Morton had communicated to her that adding a second single family home to a parcel would certainly fall under the definition of "development" as it would be expanding the use as well as increasing the density.

N. Decoteau stated that Chairman S. Morton had communicated to her that adding the phrase "for multiple single family dwellings" on page one of the Site Plan Review Regulations under the heading AUTHORITY so the document would read as follows:

*The Planning Board adopts the following rules governing the review, and approval or disapproval of site plans for the development of tracts for nonresidential uses, **for multiple single family dwellings**, for mobile home parks, or for..."*

N. Decoteau stated that Chairman S. Morton had communicated to her that adding the phrase "for multiple single family dwellings" on page two of the Site Plan Review Regulations under the heading a DEFINITIONS to be included in the definition of Development so the document would read as follows:

Development; the construction of a building, structure, or improvements on a lot, parcel, or tract of land for a nonresidential use, for multiple single family dwellings on a single parcel, for multifamily use, more than two units in a single structure, including additions or alterations to existing structures, and changes of use as further defined below:

N. Decoteau provided copies of page 1 and page 2 of the Site Plan review regulations with the phrase "for multiple single family dwellings" inserted in two places for clarification of the point.
After a discussion the Board directed N. Decoteau to have M. Serge review the proposed changes as well as the proposal to include any request to place more than one single family residence on a parcel of land in the Site Plan approval process.

6. Review of Letter of Credit for Phase II Gray Birches

The Board met with T. Avallone regarding the Letter of Credit for Phase II Gray Birches.

After a lengthy discussion regarding the phasing of the project and review of the proposed process of holding a letter of credit for each phase, and obtaining a detail of items involved in each phase prior to the start of construction for each phase the general consensus of the Board was to accept the proposed plan.

T. Avallone was instructed to provide a letter of credit specific for the first phase as described on the documents presented.

T. Avallone stated the Alteration of Terrain permit associated with this project needs to be renewed by the State. T. Avallone explained that if the Board agreed that the overall project is "substantially complete" he would not be required to submit a new plan for approval to the State.

T. Avallone asked the Board to consider allowing the project to be considered substantially complete.

T. Phillips suggested that a letter from the engineer who stamped the plans stating that the project is compliant with State and town regulations would help the Planning Board in making a decision regarding whether new plans should be submitted or the project can be considered substantially complete.

7. Whitehouse Pit Reclamation: C. Lenahan & D. King

The Board discussed the issue of reclamation at the Whitehouse pit at Map 16 Lot 4-29.

N. Decoteau presented a draft document with a summary of observations/concerns noted by Planning Board members after visiting the site individually.

After discussion the Board agreed that pursuant to *RSA 155-E:5 Minimum and Express Reclamation Standards* the following action is required for the reclamation of the Whitehouse Excavation Pit on Map 16 Lot 4-29:

1. the slope areas adjacent to Day Drive and the cul-de-sac need to be stone stabilized or perennial vegetation,
2. the slope area where there is evidence of a concentrated flow of water off of Day Drive requires a durable stone ditch,
3. the small area of slope on the east side of the access road into the pit needs to be vegetated with perennial vegetation,
4. stabilize one small area along protruding slope into pit with perennial vegetation,
5. properly clean up and dispose of the two areas of oil/fuel stained dirt on the pit floor in a manner consistent with State statute, and
6. remove all debris: tires, barrels, and all other items on the pit floor.

The Board determined that the following points would also apply:

Reclamation shall be complete by May 1, 2015.

A site visit by the Planning Board will be performed to confirm reclamation is complete.

Should reclamation not be completed by the deadline funds will be requested via the North American Specialty Insurance Company through the Rowley Agency in regard to Bond No. 110675 in the amount of \$10,000 held on behalf of Robert Whitehouse Sr. for the reclamation of the gravel pit.

8:30pm PUBLIC HEARING - Adoption of Amended Thornton Campground Regulations

Public Hearing to consider the adoption of the amended Town of Thornton Campground Regulations which were adopted by the Planning Board in August of 2000.

T. Phillips opened the public hearing at 8:30pm.

The Board reviewed the document.

T. Phillips asked if there were comments from the public present.

S. Newell stated he is one of the CBDA owners and read a letter regarding the "Proposed Amendment to Zoning Ordinance-Definition of Campground" dated August 20, 2014 submitted by J. R. Cronin of Cronin, Bisson & Zalinsky P.C. (*attached*)

The Board determined to send a copy of the letter to have M. Serge review and comment on it.

T. Phillips closed the public hearing at 9:30pm

APPROVAL OF MINUTES:

N. Decoteau presented meeting minutes which included changes submitted by various members of the board.

MOTION: "To approve the regular meeting minutes of July 17, 2014 as amended."

Motion: G. Kimball

Second: F. Freeman

Discussion: None

Motion passes: 6 – Yes, 0 – No S. Babin abstained.

ADJOURNMENT:

At 9:45pm the following motion was made:

MOTION: "To adjourn."

Motion: G. Kimball

Second: T. Phillips

Discussion: None

Motion passes: 7 – YES, 0-NO

Respectfully Submitted,
Nancy Decoteau

John G. Cronin
Admitted in NH and MA

August 20, 2014

Town of Thornton Planning Board
16 Merrill Access Road
Thornton, New Hampshire 03285

Re: Proposed Amendment to Zoning Ordinance-Definition of Campground

Dear Chairman:

As you know our firm represents CBDA Development, LLC, which has proposed a recreational campground for property within the Town of Thornton. The Planning Board is currently considering amendments to the Town of Thornton Campground Regulations. Please accept this letter as CBDA's response to that effort.

First and foremost, the Planning Board lacks authority to adopt campground regulations in the first instance. The Planning Board derives its purported authority to adopt Campground Regulations from Town of Thornton Zoning Ordinance, Article V(A)(14), which provides that "[t]he Planning Board shall have the authority to adopt regulations and approve a campground so long as it meets all state requirements in the area in which it is proposed." Article V(A)(14) is undoubtedly a zoning regulation and regulations purporting to define what constitutes a permitted campground would be a zoning regulation as well. New Hampshire is not a so-called home rule state where cities and towns have broad authority to legislate matters within their borders. Instead, New Hampshire cities and town only have those powers granted to them by the Legislature and must exercise those powers in accordance with the State enabling legislation. In New Hampshire, zoning regulations, including amendments thereto, must be adopted in accordance with RSA Chapter 675. Nothing in that chapter, or in any other statute for that matter, grants planning boards the authority to adopt substantive zoning regulations. To the extent that the Article V(A)(14) delegates to the Planning Board the authority to adopt zoning regulations, the provision, as the Town's counsel observed in an earlier opinion, unlawfully delegates zoning power to the Planning Board and, therefore, is void under state law.

State law does allow a planning board to administer an innovative land use control ordinance, RSA 674:21, and Article II(C) of the proposed regulations suggest that the Campground Regulations are being treated as an innovative land use control ordinance. However, neither Zoning Ordinance V(A)(14) nor the Campground Regulations fall within the scope of any recognized innovative land use control. RSA 674:21, I. In addition, RSA 674:21 requires that innovative land use control ordinances be adopted in accordance with RSA 675:1, II. As is evident from the proposed Campground Regulations themselves, the same were never

adopted in accordance with RSA 675:1, II and, therefore, have never been valid. In addition, innovative land use controls must be supported by the master plan. No reference has been made to any provision of the Town's Master Plan and CBDA would request that the Planning Board identify for the record the provisions of the Master Plan upon which its alleged innovative land use control regulations are generally and specifically based. Finally, by state, the Zoning Ordinance itself had to provide the standard by which the Planning Board was to administer this purported innovative land use control. RSA 674:21, II. The only arguable standard set forth in Article V(A)(14) is that the proposed campground must comport with state law and, therefore, the Planning Board would be required to administer the ordinance in accordance with that standard. However, the Planning Board proposes to administer the ordinance in a manner which deviates from that standard. For example, the proposed regulations would prohibit camping cabins within campgrounds when the same are permitted by state law. RSA 216-I:1. Likewise, the proposed regulations would impose strict liability upon the owner of the campground in all instances contrary to state law. RSA 216-I:10. The proposed campground regulations, to the extent the same prohibit or restrict that which would be permitted by state law with respect to recreational campgrounds, are inconsistent with the governing standard established by the Zoning Ordinance and, therefore, unlawful under RSA 674:21. In sum, to the extent that the Town deems the Campground Regulations to be an innovative land use control, the same are contrary to and, therefore, invalid under RSA 674:21.

The proposed regulations are inconsistent with state law in several other respects. For example, proposed Article III(C) of the Campground Regulations would impose strict liability upon the owner or manager of a campground. Zoning provisions, however, must promote a legitimate purpose of zoning to be valid, RSA 674:16, and must focus upon the land rather than the person using it. The proposed strict liability provision fails on both counts. The proposed Campground Regulations also include a waiver provision. Only a zoning board of adjustment has the power to grant variances under state law and, as noted above, an innovative land use control must provide standards for its administration. Furthermore, the penalty provision purports to grant the Board of Selectmen the right to close a campground without the process required by state law. RSA 676:15.

In addition, the proposed Campground Regulations are overly vague at times. For example, the proposed Campground Regulations reference the subdivision regulations in terms of setbacks for structures and permanent driveways. However, the subdivision regulations do not include setbacks for structures and permanent driveways and, therefore, create an ambiguity. Moreover, it is unclear whether "structures" merely refer to those structures set forth in proper Article II(A)(1). By way of further example, the proposed regulations provide that "[t]he campground must be managed in concert with accepted practices involving public safety and welfare." The proposed Campground Regulations do not define "accepted practices" and, therefore, leave persons guessing as to what is required. Accordingly, the standards to be applied to campgrounds under the proposed regulations are not clear.

Finally, the proposed regulations prohibit the off season storage of vehicles, trailers or personal property. However, automotive parking lots are allowed in commercial and industrial zoning districts and warehouses and storage are allowed in the industrial zoning districts as a matter of right. As such, the proposed regulations would potentially prohibit the storage of on

the campground property in those districts, but allow it on an abutting property within the same district. In light of the same, it is not clear what legitimate zoning purpose this proposed prohibition serves.

In sum, we do not believe that the Planning Board has the authority to adopt the Campground Regulations, let alone amend the same. Likewise, we believe that the proposed regulations are either contrary to law, overly vague, or do not appear to further any real interest. As such, we ask that the Planning Board pursue any amendment to the zoning regulations concerning campgrounds through proper means or, alternatively, allow recreational campgrounds in accordance with state law per the current Zoning Ordinance.

Sincerely yours,
CRONIN BISSON & ZALINSKY P.C.

By: _____

John G. Cronin

JGC:bms