



**CITY OF
CLAREMONT**
Planning Board Meeting

Monday, June 26, 2006, 7:00 p.m.
City Council Chambers, City Hall, Claremont, NH

Revised MINUTES

Meeting called to order at 7:05 pm by Chair Engel.

I. Roll Call

Present: Anita Engel, Chair, Alan Grigsby, Russell Fowler, Fred Kuriger, Ralph Swift, Erwin Caplan, Peter Guillette, alternate, William Regan, alternate

Absent: Mayor Scott Pope, Lori Richardson, Jim Hanson, Chhorn Prach

II. Minutes:

* June 12, 2006 Meeting

Mr. Grigsby wanted to correct that he said Twistback Road and not Citizen Street on the LaValley's case. He also wanted to correct the minutes on page 5 by stating that the proposed Ordinance #474 should be a reflection of the Master Plan in conjunction with what the citizens of Claremont wanted. He also wanted to note that the Master Plan should be completed prior to any changes being made to the zoning. Mr. Fowler felt that on the first page Mr. Pernaw statement about weight and count should be revealed. Mr. Coogan said since the attorney for the applicant has filed an appeal, this matter becomes pending litigation and he felt that it was best for the Planning Board to wait for additional information. Mr. Fowler votes not to approve the minutes or the meeting minutes of May 22.

Motion: To accept the June 12th Minutes

Made By: Mr. Kuriger **Second:** Mr. Guillette **Vote:** Motion Tied

Roll Call Vote

Anita Engel – Aye
Alan Grigsby - Nay
Russell Fowler – Nay
Fred Kuriger – Aye
Ralph Swift – Recused Himself
Erwin Caplan – Nay
Peter Guillette - Aye

Atty. Taylor suggested that the minutes be tabled to a future meeting and remain in draft form. The matter is in litigation which limits the discussion.

Chair Anita Engel felt that there was no point in looking back at the May 22nd minutes and table those minutes as well until formally adopted. The minutes will remain in draft form until formally adopted.

Mr. Fowler asked if the testing had been done on Twistback Road for LaValley's use of the former Holson Burnes plant. Mr. Coogan said M & W Soils completed testing and Mr. Stevens was preparing the report. Mr. Kuriger asked about why the road was posted for 6 tons. Mr. Coogan stated that the road is posted from Twistback Road and Citizen Street to the section of the Old Church Road. Mr. Grigsby asked where the appeal to the decision was being made. Mr. Coogan responded Superior Court. Mr. Coogan prefers to hold off on continued discussion until additional information is gathered through a meeting. Atty. Taylor felt that it was best not to speculate and to wait to see what the issues are that are addressed in the court filings, which may be discussed with the planning board in consultation with legal counsel.

III. New Business

- **Bradley Lane, 268 Chestnut Street, Claremont, NH 03743** - Applicant desires Minor Subdivision approval for existing 151,800 SF lot. Proposed Lot 1 to contain 43,000 SQ. FT with existing house. Proposed Lot 2 to contain 55,820 SQ. FT. Proposed Lot 3 to contain 52,980 SQ. FT. Tax Map 145, Lot 15, Zone R1.

Mr. Coogan presented an updated plan that was prepared by Mr. Thomas Dombroski. Mr. Fowler inquired as to why the update was just presented to the Board members at the time of the meeting. The nature of the changes: Stream bank district and the flood plain which requires a 75 foot setback with some restrictions as well as no septic system within 100 feet of the flood plain. Mr. Coogan asked for proposed building envelopes for lots 2 and 3 in order to identify where the residence would be. DOT provided a permit for the driveway of the proposed lot as well as the existing lot and there will be a shared curb cut. Better information on topography and flood elevations was requested and provided. Information provided was provided by wetlands scientists and will be stamped certified. This will help give a better idea of the situation. Chair Engel asked if this was the additional information provided for approval. Planning Board By-Laws ask for 10 days notice for new information before a meeting, therefore Mr. Coogan stated that it would be acceptable for a continuation in order to review for more detail. Mr. Coogan said that the 4,000 sq ft. septic area is shown and demonstrates the lot can handle a septic system. The system uses about 10-15% of the area. NH DES approval is a 2 step process. This is the first step in the 2 step process.

Chair Engel read from the Planning Board By-Laws that information not submitted at the time of the application for review and must be submitted in no less than 10 days prior to the meeting to which that matter would be heard. The result is that it MAY impact the boards decision to hear the case or not. Mr. Fowler wanted it to be known that he wants this information to be provided in his packet, not changed at the night of the meeting. Mr. Coogan felt that this plan should be accepted as complete. Chair Engel asked if acceptance would start the 65 day clock and Mr. Coogan said that it in fact would do that. Mr. Grigsby agreed that this information is untimely and would like to see things done differently.

Motion: To accept the plan as complete.

Made By: Mr. Grigsby **Second:** Mr. Swift **Vote:** Unanimous

Chair Engel asked what the method was to communicate to the applicant what is expected at the time of submittal. Chair Engel wanted to make sure the applicant is aware that these things need to be done on a timely manner. Attorney Taylor pointed out that on the application form it does in fact state that this material must be presented within the appropriate time frame.

Motion: To continue approval of this information until July 10th, 2006 at the next Planning Board Meeting.

Made By: Mr. Fowler **Second:** Mr. Grigsby **Vote:** 6 Ayes 1 Nay

Mr. Caplan needs a copy and the alternates as well of the new plan provided at the meeting.

- **Tony and Michelle Bourque, 3 Orchard Road, Claremont, NH 03743** - Applicant desires Minor Subdivision approval for existing 25,900 SF lot. Proposed Lot 1 to contain 12,200 SQ. FT. Proposed Lot 2 to contain 13,700 SQ. FT with existing house. Tax Map 143, Lot 214, Zone R1.

Mr. Coogan stated that in 1948 these parcels were listed as separate tracts and tracts 1 and 2 may already exist as lots, but it is presented to the Board as one parcel of land and is being treated as a subdivision approval. The new house would be facing Orchard Lane and the driveway would be coming off Whitcomb.

Mr. Guillette recused himself since he is an abutter to this property and Mr. Regan sat for this application.

Mr. Grigsby asked if this was a division of a cement slab. Mr. Coogan said this was all one lot of record and the new line was to the east. Mr. Coogan said this is still a usable piece of property and meets the setback of 10 feet. There is an open shed with no slab and appears to encroach on the Osgood property. This should also be addressed.

Motion: Accept the plan as complete.

Made By: Mr. Swift **Second:** Mr. Grigsby **Vote:** Unanimous

Attorney Taylor informed that if this is approved, she requests that a condition be placed for her to review the tract lines and it would be given a chance to have legal review. Mr. Grigsby wanted to know if they could be asked to demolish the open shed. Mr. Coogan said that it isn't appropriate for the board to approve something that is non-conforming. He feels that this should have been done with the Zoning Board if these were issues prior to the subdivision request. Mr. Thomas Dombroski spoke and said that this had been existing since the 1950's and the proposed driveway on this lot would be on Whitcomb Lane. The applicant Mr. Tony Bourque spoke and said that they wanted to build single family home and that the shed would be removed and would no longer be encroaching on Mr. Osgood's property. When the house was purchased the deed listed that this was tract 1 and tract 2.

Public Hearing Opened

Abutters List Read

Abutters Present:

developers want to know what they are required to do. This is legally and administratively different from a condominium. With a condominium there is not a subdivision and usually a condo owner only owns the interior of the walls. Each individual lot owner would own their lot, driveway and garage.

According to NH RSA 674:21-A, any open space designation under this type of development creates a conservation restriction under State Law. In regards to the density, the Planning Board has the discretion to grant something that is less dense. Density is not a guarantee. The Planning Board determines whether or not the land at that time would be appropriate. The density bonus is a sliding scale that is capped. All requirements must be met and can still only increase density by a certain amount. Historical and environmental aspects are considered to encourage preservation of things that are important to the community. The 50 foot setback in question is regarding the tract boundaries and not internal setback requirements. A single family structure that has a rear lot line of the tract boundary would have a 50 foot setback, but the same structure with a rear lot line to another house within the tract would only require a 20 foot setback. Division 3 Article II is a cross reference to special exceptions. The City of Claremont's Zoning Ordinance regarding requirements for a special exception is stricter than state law and case law. Curbs can be required if the Board sees fit. Buffers have to exist and this is also left to the discretion of the board. Parking requirements default to other section of the zoning ordinance.

Atty. Taylor surveyed Dover, Goffstown, Keene, Lebanon, Merrimack, and Rochester. Generally the zones where conservation or open space development is allowed are Residential Zones, Agricultural, Rural, and Conservation. They are not permitted in Industrial or Commercial Zones. Dover requires **mandatory** open space development for all new residential proposals. Dover has no minimum lot size and they relaxed the dimensional requirements which are determined by Planning Board discretion. They use a formula to calculate percentage of open space that is quite complex. Goffstown mandates that all residential proposals over 20 acres be open space. Lot size is up to 25% smaller than what is permitted in the underlying zone and as low as 5,000 sq ft. where there is municipal water and sewer. Keene rural and low density zones go down as low as 8,000 square foot lots with open space with a minimum of 50%. Keene allows for 4 acres development with 60 % of open space. Lebanon is very similar and permits open space development in 3 zones requiring a 50 acre minimum. Rochester permits open space development in the Agricultural Zone with 50 acres and the Residential Zone using 25 acres. Rochester permits a maximum of 6 units per acre and the lot size is flexible.

Chair Engel was concerned with deferring to the parking ordinance and was uncomfortable since there are weaknesses in that area. Chair Engel also mentioned that originally this was first presented as a way to develop areas exclusively where City water and sewer already existed. The Board members were initially comfortable with this original proposal. Now there seemed to be an opportunity where water and sewer do not exist. Attorney Taylor said the existing ordinance permits the PUD's in the Agricultural, Rural and Industrial Zones. Currently development can occur in 10 acre tracts. While the Master Plan is being revised, developers will come in and the tools will be needed to meet the developers' needs. Attorney Taylor said she recommended it be expanded to a City wide ordinance, similar to the current PUD ordinance, but excluding residential development in the Industrial Zones. Some areas in the Agricultural and Rural Zones do in fact have water and sewer.

Mr. Swift asked if a developer could actually pay to extend the water and sewer services. Attorney Taylor stated that yes; a developer could in fact pay the \$1 million per mile to extend

the water and sewer if they so desired. If City water and sewer was not available, a standard well and septic system can be located on individual lots. The NH DES has provisions for Community Septic and Community Wells.

Mr. Grigsby asked about garages being a part of the common space and wouldn't this be a part of the deeded property. Attorney Taylor states that this would be for a multi-family common space. The garage space would be deeded to the individual owner and designated. A multi-unit building would have common areas. The developer would have these items drafted in a particular way in the condominium documents. Mr. Grigsby feels that it would be clearer to say that open space should be 35% of the proposed development area, the entire land. He was concerned about large acreage and those containing many multi-family units. Current zoning ordinance permits for potential for manufactured housing and could lead to an undesired environment. He would like to see a rural character maintained.

Mr. Grigsby inquired how the existing and proposed ordinances work under the Special Exception requirement. Attorney Taylor said that it refers to the rules for variances and special exceptions and under the requirements for a special exception in Claremont the Zoning Board considers such issues as whether or not the site is an appropriate location for such a use, and that the land value will not be reduced by the use, that no nuisance or unreasonable hazard will result, no adverse traffic impact will result, that adequate and appropriate facilities will be provided for proper operation and maintenance including water/sewer and parking, no adverse impact on the view, light and air of any abutter, use will not place a disproportion of burden on the cities operational services in comparison with the anticipated tax revenue, such use would not be detrimental to the public health, safety and general welfare. The Zoning Board of Adjustment may require other items as well. This goes way beyond existing state law and case law. This language provides the Zoning Board of Adjustment with considerable room to say no to any applicant.

Mr. Coogan pointed out on the zoning map where the zones in question were located.

Mr. Regan referred to documents given to the City Council members previously regarding Ordinance #474 Open Space Development. The Planning Board didn't receive this document and Mr. Regan read this aloud. He wondered if this was intended to be used to circumvent the Zoning Board. Attorney Taylor said this was not the case. The intent is not to have the Zoning Board determine Land Use. If something is going to be done on a regular basis, it should not go before the Zoning Board of Adjustment. Mr. Regan said that his biggest problem is that why do we want to encourage limited lot sizes and discourage vast building. Mr. Coogan mentioned that the conventional grid lot may not be desirable because of the cost of infrastructure and that particular layout is not economical. Mr. Regan felt that the developer has the choice to put in extra water and sewer and that it shouldn't be made more attractive to developers to change the zoning to allow for bigger sprawls and cluster development.

Mr. Fowler stated that letting the developer off cheaper would shift the burden over to the taxpayer. Chair Engel reminded there will be a public hearing on this ordinance on July 19th. Chair Engel stated that there are only 30 days to make a decision on whether or not to make a recommendation to approve to be presented to the City Council.

Chair Engel opened the floor to the public for additional comments.

Alice Clay of Ward II and Chair of the Conservation Commission felt that the lack of communication among the boards is a problem. She questioned that the open spaces with regard to the 10% added if you have wet lands that the total number added to about 95%. This would only leave 5% rather than the 35%. She commented that the complexities of regulations in other communities' ordinances could be due to the fact that the ordinance was not well thought out. Attorney Taylor stated that this would not reduce the amount of open space and that it would still require the 35% and would allow for additional units on the area to be developed.

Mr. David Perry, Ward III, had questions regarding the whole ordinance and doesn't think the public is aware of all that is being discussed. He was concerned with the area outside of the sewer and water. He felt that 35% isn't a large piece of property. The areas researched are closer to suburbs of Massachusetts and not a good comparison to the City of Claremont. He didn't like the idea of the density bonus and the developers shouldn't be allowed to take another piece of land. Multiple units mixed with single units doesn't seem advisable He felt there will be renters in the multi-family units. Minimum lot size seems to be too small and will be crowded and not economical for the public services that will need to be provided. Mr. Perry felt that more study is needed for a more educated plan.

Mr. Arthur Luce, Ward III, supported Mr. Perry in that research has not been properly done and that these studies would provide that this type of development would cost more money. Studies done during the 1990's demonstrate this type of development may cost the City. This proposal is premature. The special exceptions are not appearing anywhere in the ordinance. Mr. Luce will have copies ready for the City Council of research done per Mr. William Regan's request.

Attorney Taylor referred to the standard for all special exceptions. These are not found in the proposal but are found in Sec. 22-63 of the Zoning Ordinance. These are included in the proposal by reference.

Dorothy Luce, Ward III, stated the proposed ordinance lacks an an initial review by the ZBA.

Attorney Taylor said that ZBA should not be determining land use but should address items consistent with Sec. 22-5-77. There are two types of use that would be referred to the Zoning Board under special exceptions standard for review and not the standard type of proposal.

Mr. AJ Maranville, Ward II, was concerned that this could be an issue for wetlands and EPA and perhaps runoff problems would be a large burden for the community. He would like to see the Master Plan completed first with this ordinance worked into it.

Mr. Paul LaCasse, Ward II, felt that this proposed ordinance would throw the community into a situation we don't want to be. He thought it would be a huge tax burden on the community. He wanted the plan to be reconsidered.

Mr. Bernie Folta, Ward III, said there is a link to between this type of development and economic development. He would like some clarification on this. Mr. Coogan mentioned that businesses desiring to move into Claremont see a large need for single family homes and residential development. Mr. Coogan felt that school enrollment is static at this point in time. He stated the proposed ordinance includes a provision for phasing in of the housing and the school age children. School enrollments have declined in many New Hampshire communities. .

Mr. Fowler asked Mr. Caplan how many houses are listed on the market. Mr. Coogan said only 8 new single family homes have been constructed during the time period of 1/1/06-6/26/06. This does not include condos but only single family detached housing. Mr. Grigsby thought that the shortage is at the opposite extreme. He states affordable housing is a moot point, since none of it is affordable.

Mr. Grigsby felt that there is far too much density and wanted the ordinance to require a fixed percentage of open space and wanted the language to be reworded. The Mater Plan needs to be done first for community input. The impermeable surfaces are far too large, and the outlying areas should not be an exception that would grant a 5 or 10 acre development. He feels the standard should be kept to 10 acres. He preferred not to see multiple family housing and that this type of housing cannot be mixed with single family homes in the same areas. Chair Engel felt that mixed homes can work very well together and can have several appealing attributes. She referenced the Bluff area and how nicely this community works well together.

Mr. Swift felt that he is in agreement with single family housing and single lots and these details need to be worked out. He believed there is a shortage of houses and he didn't think this development was bad if it was done correctly. Mr. Fowler said there would be other reasons for people not relocating to this area other than a lack of housing. There are more factors than not being able to find a home. Mr. Guillette agreed with Mr. Swift that there is a lot of discretion given to the board to make decisions in the future. Mr. Regan said a building development is built based on sales ability. We shouldn't have to change our ordinances to attract the builders. They will want all the bonuses and this isn't the kind of developer that we want in Claremont.

Mr. Kuriger agreed there is a need for housing in Claremont. We need to hear from a wide range of people in the community to get a sense of what the public would like to see happen. If there was a mistake made, it could be that the process was not thoroughly thought out.

Chair Engel wanted to clarify that this Board is not approving any Ordinance but merely endorsing a proposal for the City Council. She encouraged everyone that is present to attend the Public Hearing on July 19th. Attorney Taylor said the City Code is written for the Planning Board input and needs to occur before the Public Hearing. This can only be varied if the code were to be changed.

Discussion

Mr. Coogan and the Board briefly discussed making amendments to Ordinance #474. It was generally agreed there was not enough time to discuss and propose them to the City Council before it would act. The Board discussed sending an explanation of its vote to the City Council as has been done in the past. The Board decided it would vote and then Mr. Swift, who volunteered, would write the explanation which would be approved by the board at its July 10th meeting. Mr. Regan said as a City Councilor he would value the Board's views because the Planning Board had looked at the issue more completely and for a longer time. Mr. Guillette spoke in favor of Open Space and then a vote was taken.

Motion to: Ordinance #474 not be recommended to the City Council

Made by: Mr. Fowler **Second:** Mr. Caplan **Vote:** Roll Call Vote

Mr. Kuriger: Aye
Mr. Swift: Nay
Mr. Grigsby: Aye
Mr. Guillette: Nay
Mr. Fowler: Aye
Mr. Caplan: Aye
Chair Engel: Nay

Motion Passes to Not recommend the ordinance to the City Council

- Continue Discussion on Master Plan Update Process

Mr. Coogan stated he is waiting for the Mayor and City Manager to appoint the Master Plan Advisory Committee.

IV. Other

Mr. Richard Elliott, Ward II, lives on Sullivan Street and the road is posted for 6 tons on Twistback Road. He had concerns about LaValley's and the tractor trailers heading down Sullivan St. Mr. Elliott wanted the board to be aware of the damage that the tractor trailers are creating to the roads. The road is in complete disrepair. And Mr. Elliott wanted to see the core samples taken down at the end of the road. Note: Sullivan handles truck traffic at present and the La Valley's site is zoned Industrial.

V. Reports of Boards and Committees

Mr. Fowler attended the last Conservation Committee meeting.

VI. Communications

VII. Adjournment

Motion: To Adjourn

Made By: Mr. Swift

Second: Mr. Regan

Vote: Unanimous

Meeting adjourned at 10:05 pm.

Respectfully Submitted By,

Katrina Spaulding