

**SOMERSWORTH PLANNING BOARD
MINUTES OF MEETING
JULY 15, 2015**

MEMBERS PRESENT: Ron LeHoullier, Chair, Harold Guptill, Vice Chair, David Witham, City Council Representative, Bob Belmore, City Manager, Aaron Fournier and Jeremy Rhodes.
MEMBERS ABSENT: Paul Robidas and Mark Richardson.
STAFF PRESENT: Dave Sharples, Director of Planning and Community Development and Tracy Gora, Planning Secretary.

The meeting was called to order at 6:30 pm.

1) APPROVAL OF MINUTES

Motion: Witham moved to accept the minutes of the meeting of June 17, 2015.

Seconded by Guptill. Motion carried with a 6-0 vote.

2) COMMITTEE REPORTS

A) ZBA Report

Sharples referred to the attached report and stated that an application for a variance to keep livestock was denied.

B) City Council Report

Witham reviewed the attached report and stated that the Council approved a zoning amendment to the Sign Regulations to allow advertising on COAST Bus shelters. Stated that signs will need to conform to the COAST Advertising policy. Stated that there are many park improvements underway for the new fiscal year including the new infield at the Noble Pines Park, work on the passive park on Ash Street, continuing work at the Mast Point Dam and resurfacing of the basketball court at Jules Bison Park. Stated that the Downtown Improvement Project is almost done and should be wrapped up by the end of July.

C) Site Review Technical Committee Report

Sharples referred to the attached report and stated that no meeting was held.

D) Minor Field Modification Report

Sharples referred to the attached report and stated that none were requested.

E) Strafford Regional Planning Commission Update

Sharples referred to the update that was supplied in the packets.

F) Vision 2020 Committee Report

Sharples stated that no meeting was held.

LeHoullier stated that item 4A on tonight's agenda for Jeff Catalano has been postponed until the August 19, 2015 Planning Board meeting.

Witham stated that he feels that item 4B on tonight's agenda will be quick and **moved** to hear item 4B before hearing old business.

Seconded by Guptill. Motion carried with a 6-0 vote.

The Board heard item 4B for Twelve Month, LLC

Sharples reviewed his memo (see attached) and stated that the applicant is seeking to modify condition of approval #12 from approved subdivision SUB #05-2013 regarding an irrevocable letter of credit for the security for public improvements. Stated he is requesting to use a surety bond instead of a letter of credit. Stated that the applicant says a surety bond is adequate for of security. Stated that this is not a public hearing and no abutters have been notified. Stated that he has a suggested condition of approval if the Board decides to go in that direction.

Don Borenstein, attorney, represented Twelve Month, LLC and stated that they are requesting that the Board revise condition of approval #12 to allow the site contractor to post a bond. Stated that the contractor, Severino, is familiar to the City and has posted bonds before. Stated that the regulations allow for bonds and they would like to amend the condition of approval.

Witham asked about the difference between a surety bond and a letter of credit.

Borenstein stated that a letter of credit would be through the developer's bank where a surety bond can be through the construction company. Stated that both forms of security are backed up by financial institutions. Stated that they have no issue funding the review by the City Attorney. Stated that these are just two different versions of security. Stated that this bond would probably be the same as other bonds that the City has.

Witham asked if there are different hoops to jump through if the bond has to be called.

Borenstein stated that there can be but that is why the terms would be reviewed by the City Attorney. Stated that there is a process to both but that they are both very similar forms of financial security.

Witham asked if the Board has ever done this before.

Sharples replied no and stated that the requirement is fairly new but that the Board has accepted surety bonds in the past before a letter of credit was required. Stated that, from what he understands, with a letter of credit, the cash has to be in the bank whereas it doesn't with a surety bond.

Guptill asked if the City has more exposure with a surety bond when it comes to collecting funds.

Sharples stated that he is unsure but that he wants equal protection.

Belmore asked if a surety bond expires.

Borenstein stated that he is not with the bonding company but that he understands that the bonding company will give them what they are asking for and then they will bring it to the City Attorney. Stated that the applicant is the middle man to get a bond that the City likes. Stated that a bond used to be the standard form of security but there are more letters of credit now.

Witham asked if it is typical for the contractor to secure the bond versus the developer.

Borenstein stated that when bonds are posted they are almost always from the contractor.

Joe Falzone of Twelve Month, LLC addressed the Board and stated that his company will be on the bond as well. Stated that he has a limit on his line of credit with the bank so if he puts a large amount of his money in the letter of credit, then his credit is more limited. Stated that he doesn't want to hold himself up.

Motion: Witham moved that the request of Twelve Month, LLC to modify SUB #05-2013 condition of approval #12 be **APPROVED WITH THE FOLLOWING CONDITION:**

1. The surety bond shall be reviewed and approved by the City Attorney at the applicant's expense to insure that all public improvements can be completed in accordance with the approved plans.

Seconded by Rhodes. Motion carried with a 6-0 vote.

3) **OLD BUSINESS**

- A) John J. Flatley is seeking a conditional use permit and site plan approval to construct three apartment buildings with associated site improvements on property located on Tri City Road, in the Business (B) District, Assessor's Map 39, Lot 03, SITE #12-2014.

Sharples reviewed his memo (see attached) and stated that this was tabled at the last meeting but the Board had made it clear that they wanted to move forward with this. Stated that the Board had asked him to do an analysis of the septic and sewer but he just learned that the applicant is withdrawing their waiver request for a septic system. Stated that if the applicant still wants a septic later on then they will come back to the City with an amendment. Stated that the latest plan is to connect to the sewer system on the abutting property. Stated that he supplied the Board with an executive summary with a chronological history of this application thus far. Stated that the Board discussed the building of a sidewalk, the fiscal impact of the property, the widening of Tri City Road and the turn around at the end of the road. Passed out suggested conditions of approval. Stated that regarding the widening of Tri City Road, Flatley and Key Auto, a recently approved development at 100 Tri City Road, agreed to share that cost. Stated that he has learned that the Key Auto project may not proceed but that this widening still needs to be done. Read reworded suggested condition of approval #8 and stated that this way they can make sure the widening gets done. Stated that regarding the sidewalk, the applicant originally proposed one from their property to Market Basket. Stated that Strafford Regional Planning Commission (SRPC) and CLD Engineers recommended a sidewalk from the property to High Street but the developer only proposed half of that. Stated that he came up with a cost to do the entire sidewalk and performed a proportional share analysis. Stated that the applicant proposed to modify the sidewalk and have no raised granite curbing to Market Basket. Stated that there has been much discussion on sidewalks and referred to suggested condition of approval #15. Stated that the rest of the suggested conditions of approval are pretty standard. Stated that the applicant is requesting a waiver from having granite curbing on the interior of the site.

Motion: Witham moved that the application for John J. Flatley be removed from the table.

Seconded by Guptill. Motion carried with a 6-0 vote.

FX Bruton with Bruton & Berube, PLLC represented the applicant and addressed the Board and stated that Sharples summed everything up pretty well. Stated that at the last meeting they were at they seemed to have a consensus from the Board regarding the proposed sidewalk. Stated that the discussion on curbing within the interior of the development seemed favorable and that the plans show Cape Cod style curbing. Stated that the applicant was considering having on-site septic but they have not designed it and are not pursuing that at this time. Stated that the suggested conditions of approval are fairly straightforward and that he understands the

tricky nature of widening Tri City Road. Stated that they thought Key Auto would have developed by now. Stated that the suggested condition of approval for the widening of the road seems like the best way to deal with it. Stated that they object to the cost of the proposed sidewalk. Stated that the applicant would commit to the methodology but that they would only put \$25,000 toward the sidewalk. Stated that the applicant worked with Sharples and engineers to come up with a turnaround and that they did that to work with the City.

Nathan Chamberlin with Fieldstone Land Consultants, PLLC represented the applicant and addressed the Board. Stated that the Board seemed to be in favor of the Cape Cod style curbing and concrete walks on the interior of the site. Showed on the plans. Stated they modified the City Engineer's design for the turn around and that it will be 44 feet wide. Stated that they will have overhead electric down Tri City Road and then go underground on the interior of the site. Stated that all drainage and stormwater is the same. Stated that the pump house is in the same place and that they will tie into the existing sewer system on the adjacent property.

Witham stated that he didn't see the above ground power line before and would like more detail on that.

Chamberlin stated that the line is overhead on Tri City Road and part of the way onto the property.

Sharples stated that according to Section 11.3.b of the Site Plan Regulations all the lines need to be underground.

Chamberlin stated that Eversource did the design and that we put it on paper. Stated that it is just overhead on the main access drive.

Witham stated that they have talked at length about this project. Stated that the applicant is requesting a waiver to have Cape Code curbing and that he feels that in the long term it could be more maintenance for the applicant. Stated that it might be more for traffic control but that it won't be visible from the public right of way. Stated that the bigger piece to him is the sidewalk issue. Read from the Site Plan Review Regulations and stated that the purpose is for safe and attractive development. Stated that there was a study done by Pernaw and that there is already pedestrian and vehicle traffic on Tri City Road but now it's going to be added to. Stated that he appreciates the proportionality discussion to divide up the cost but that the purpose is for safe development and proportional share doesn't build the sidewalk. Stated that as a City Councilor he gets requests all the time for sidewalks and that he has a long list of road that need sidewalks but the City doesn't have the funds to build them. Stated that the City will never come up with their share of the portion for the sidewalk. Stated that surrounding properties have a portion but it may not be easy to get that money. Stated that although the proportionality share has logic it doesn't build the sidewalk. Stated that they are not providing a safe development here. Stated that the Site Plan Regulations has rules for pedestrian facilities, etc. and the sidewalk needs to be built to make it happen. Stated that another piece to this is the widening at the end of Tri City Road and asked where the proportionality is on that. Stated that the improvement was going to be 50/50 with Flatley and Key Auto but that he feels that Flatley should have more of the responsibility for that. Stated that this proposal does not provide for a safe development and that unless they are going to build the sidewalk, he will not support this. Stated that he is also concerned with the fiscal impact to the community, specifically to education. Stated that he is leaning toward denial.

Guptill stated that at the April meeting the Board indicated that we may be favorable of not having granite curbing the entire length of the sidewalk. Stated that there is a good argument for a sidewalk to be built but the City would have to come up with the rest of the money. Stated that he is okay with just having granite to a certain point but he wants assurance that it will get built.

Rhodes stated that this proposal went before the Conservation Commission and there was no sidewalk but the Commission recommended one. Stated that there will be a lot of foot traffic. Stated that the utilities were coming in from Tri City Road and that is what the Commission wanted because of wetlands impact.

Fournier stated that he agrees with the sidewalk and the applicant should be 100% responsible. Stated that he doesn't agree with the school numbers from the fiscal impact study and had wanted more information.

Bruton stated that regarding the sidewalk, the State statute that allows for exactions requires proportionality. Stated that Witham brought up the sidewalk issue but that this Board never made a recommendation to Key Auto for a sidewalk. Stated that they had an issue with the proportionality analysis because it gives an insignificant percentage to Key Auto. Stated that Key Auto will be a major center and will create a lot of traffic but the Board didn't impose a sidewalk exaction to them. Stated that 100% responsibility for the sidewalk won't fly and the applicant won't build in that case. Stated that they have offered a modified approach to the sidewalk where the applicant pays \$25,000 and the City would only need to come up with another \$25,000 and they have their sidewalk. Stated that this is a less expensive way for the City to get their sidewalk. Stated that the Board should consider this because the sidewalk will get built under this proposal.

Chamberlin stated that they looked into bringing the utilities down Tri City Road instead of where they are proposed. Showed on the plans and stated that there would just be buffer impacts but no wetland impacts. Stated that he is not sure where the gas is located on Tri City Road but that it is more costly there. Stated that they don't want to come down Tri City Road with electricity.

LeHoullier questioned the fiscal impact.

Bruton stated that they submitted a fiscal impact report and subsequently an amendment to the report. Stated that he thought they adequately addressed all the concerns and since discussions did not continue he thought they were all set.

Witham stated that, regarding the sidewalk, there is a question on if the City will fund it but that is a question for the City Council. Stated that the sidewalk needs to be built and asked about imposing a condition of approval that would require the City to fund its share prior to issuance of a building permit.

Sharples stated that the law allows for reasonable conditions but that he would like an attorney's opinion on that.

Bruton stated that the widening of the road won't happen if the project is denied. Stated that Key Auto declined to do anything with the sidewalk. Stated that statute is clear on how this process works and the condition of approval that Witham just mentioned would not work. Stated that the applicant would object to that process.

Witham stated that regarding proportionality, even though there is State law, any applicant could fund an offsite improvement if they wanted to.

Bruton stated that they could but this applicant will not. Stated that they are willing to work with the Board and that they are doing easements which don't have anything to do with the project. Stated that they also agreed to the widening and the turnaround, which they were not going to do. Stated that this is an expense and that they are already working with the Board to do extras but they are not paying for the full sidewalk.

LeHoullier asked where the school busses go on the existing property.

Bruton stated that they stop at the entrance to the property. Stated that the turnaround is only for the snow plows.

Chamberlin stated that the school bus turns around at the first entrance for Key Auto.

LeHoullier asked if the applicant just provides the money of builds the sidewalk if the project gets approved.

Sharples stated that they just supply the funds, which would go into an escrow account and the City would hire someone to build it.

Bruton stated that what they proposed in the beginning was to bring the sidewalk to the bus stop.

Guptill asked if that would be 50% of the entire sidewalk.

Chamberlin stated that it would be about a third of the sidewalk.

Guptill asked if the “proportionality” piece is in the State RSAs.

Sharples explained the RSA and stated that proportionality has to include all properties.

Guptill stated that more than 50% of the traffic on Tri City Road will be from Flatley. Stated that he would think that the applicant would be just as concerned as the City for safety. Stated that he is stuck on the safety issue.

Witham stated that he hasn't lost site of the non-granite curb to the bus stop but that the greater concern is the area from the bus stop to High Street because that area is the heaviest traveled. Stated that the road is narrower there. Stated that he attended the site walk in the winter and the problem was worse then. Stated that he feels this is a breaking point. Stated that he feels the sidewalk is a small fee for safety and the Board is charged with safety. Stated that he can't get beyond that.

Rhodes stated that he feels the same as Guptill that this is a small percentage of the project. Stated that there is a cost of \$50,000.

Sharples stated that there will be granite curbing from High Street to the Market Basket entrance.

Rhodes stated that he is also concerned with public safety and asked if the cost for the sidewalk would be less if being done at the same time as the other construction because they will already be working on the site. Asked if the sidewalk work could just be added to the contracts for the site development.

Bruton stated that the number they proposed is a hard number and cannot be reduced. Stated that the waiver request is just for the interior sidewalk.

Witham used Twelve Month, LLC as an example and stated that they are going to be repaving a good portion of Stackpole Road and other off site improvements and they are paying the full cost of it. Stated that the numbers for the sidewalk are from the City's contract Engineer Joe Ducharme, not the developer.

Belmore stated that he is confused with the utilities and asked if a waiver is needed.

Sharples stated that he has a suggested condition of approval that they be underground. Stated that they can request a waiver.

Belmore stated that if the Board denies the proposal based on safety that is one thing but now they are talking about proportionality.

Sharples stated that he had the City Attorney review his proportionality analysis and he was okay with it.

Motion: Witham moved that the request of John J. Flatley for a site plan to construct three apartment buildings with associated site improvements be **DENIED** because public safety is not being maintained and questions regarding fiscal impact to the community have not been clarified.

Seconded by Fournier.

Belmore stated that he still has questions on proportionality and waivers and that he is not comfortable with making a decision yet.

Guptill stated that he would want to abstain from this vote because he is not sure the Board can deny this based on offsite improvements.

Witham stated that his motion is based on safety, not proportionality. Stated that a sidewalk is needed.

Motion failed with a 3-1-2 vote with LeHoullier opposed and Belmore and Guptill abstained.

Belmore stated that the Board has to make a decision tonight unless the applicant agrees to another extension.

The Board took a recess.

Witham stated that, regarding an extension, he feels there is no further information to be learned so he hesitates to do that. Stated that this is dragged on long enough and that he is not sure there is anything more. Stated that he would not vote in favor of tabling the application.

Motion: Belmore moved that the request of John J. Flatley for a site plan to construct three apartment buildings with associated site improvements be **TABLED** until the August 19, 2015 Planning Board meeting.

Seconded by Guptill.

Sharples confirmed that the applicant would agree to this.

Bruton replied yes.

Motion failed with a 3-3 vote with Fournier, Rhodes and Witham opposed.

Bruton stated that they would agree to the condition of approval for underground utilities.

Sharples stated that it would be for Tri City Road also.

Bruton stated that they haven't looked into it but that he feels it is just for the subject property.

Sharples read from the regulations and stated that it is for all development.

Bruton stated that they agree to go underground on their property but that he doesn't believe it is needed on Tri City Road. Stated that they will challenge it if it is a condition of approval. Stated that they would like some form of approval so they can move forward from there.

Witham stated that regarding the sidewalk, it is more dangerous from High Street to the far end of the storage buildings. Asked if the applicant would be amendable to constructing the sidewalk from High Street to the bus stop. Stated that it is a bit longer.

Bruton asked that the Board reconsider pushing this off until next month because that is a new idea and he would have to look into it more. Stated that they would like more time for that because he cannot answer that right now.

Belmore stated that this may be a better proposal and that he is willing to table it. Stated that this application was considered to have regional impact and the SRPC and SRTC and are looking at safety also. Stated that they both recommended that there be a sidewalk.

Motion: Guptill moved that the request of John J. Flatley for a site plan to construct three apartment buildings with associated site improvements be **TABLED** until the August 19, 2015 Planning Board meeting.

Seconded by Belmore. Motion carried with a 5-1 vote with Fournier opposed.

B) Any other old business that may come before the Board.

None.

4) NEW BUSINESS

A) Jeff Catalano, on behalf of Fred Schneider is seeking site plan approval for the sale and display of sheds on property located at 208 Route 108, in the Commercial Industrial (CI) District, Assessor's Map 62, Lot 09, SITE #02-2015.

LeHoullier stated that item 4A on tonight's agenda for Jeff Catalano has been postponed until the August 19, 2015 Planning Board meeting.

B) Twelve Month, LLC is seeking to modify SUB #05-2013 condition of approval #12 regarding an irrevocable letter of credit for property located at 301 Green Street and 31 Stackpole Road, in the Residential Single Family (R1) District, Assessor's Map 19, Lot 01 and Map 20, Lot 05, SUB #05-2013.

See above.

C) Any other new business that may come before the Board.

None.

5) WORKSHOP BUSINESS

A) Any workshop business that may come before the Board.

None.

6) **COMMUNICATION AND MISCELLANEOUS**

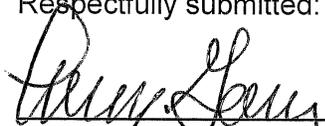
None.

Motion: Guptill moved to adjourn the meeting.

Seconded by Rhodes. Motion carried with a 6-0 vote.

Meeting adjourned at 8:17 pm.

Respectfully submitted:



Tracy Gora, Planning Secretary
Somersworth Planning Board