

HAMPSTEAD PLANNING BOARD

11 Main Street Hampstead New Hampshire 03841-2033

Minutes for 15 October 2012

Chairman Randy Clark opened the meeting at 7:00 PM. Members present included Randy Clark, Proctor Wentworth, Neil Emerson, Dean Howard, Bill Weber, and Priscilla Lindquist, Ex-officio voting member. Paul Carideo was absent. Nick Cricenti, PE, SFC Engineering and Planning Board Secretary attended. Attendees included John Hubbard, Karla Marcotte Ed Barken Penny Carr, Bruce Worthen, Donna Ferlito Brown, Karen Tarilla, Clare Stilling, Scott Hogan, Cornelius Balk, Lynn Balk, Janet Rabideau, Molly E. Allen, Suzanne Zakian, Erin Bennett, Chad Bennett, Timothy Neale, Lauren Becker, Karen Utt, Jason Kimball, Diane M. Utt, Nancy Fulmore, Judith Weber, Cynthia Neale, Penny Williams, Media, and Julia Forbes. The list of persons attending is part of the record.

Randy Clark, Chairman announced the next meeting of the Planning Board will be November 5, 2012. The last date to file plans for a first public hearing is November 13, 2012. The Public Hearing date would be December 3, 2012.

1ST PUBLIC HEARING 01-018 Depot Crossing Site,

hearing continued from October 1, 2012

Chairman Clark opened the continued public hearing by inviting Mark Gross to bring the Board up to date. Mr. Gross summarized an e mail from William O'Donnell of the Department of Transportation He wrote " the Drive Permit that had been prepared today for the subject parcel (Depot Development Corp Commercial Development) needs to be revised to reflect two separate permits." **Attachment # 1.** M. Gross said the permit would be signed Tuesday. He asked the Board if the confirmation of approval by e-mail was sufficient for the Board to issue a conditional approval. Nick Cricenti added it was unusual for the State to issue two permits for one site. He said he felt the State was being very careful. M. Gross pointed out the separate permits would allow modifications to be made on one entrance with no effect the other driveway. Mark Gross presented a memorandum **Attachment # 2,** addressing the issues raised by Julia Forbes in a letter to the Board. Mark said he wanted to be sure the Board had his answers

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were in writing. The Chairman asked if any members of the Board had questions. There were none. R. Clark requested M. Gross to summarize or read the memorandum. Mark Gross began by reading the purpose of the letter "in rebuttal to many of these erroneous and misleading statements made by Ms. Forbes." Abutter status for Ordway Park: The property is owned by the Town of Hampstead and the Town or their appointed agent may represent the interests. Ordway Park wells: The closest point at which the well is located to any gasoline component on the site is 285 feet. M. Gross questioned the meaning of the "1% margin of error" quoted by J. Forbes. DES distance requirement to wells is 250 feet for a private well and 500 feet from a public water source. M. Gross noted the well on the Ordway Park property is listed for agricultural use. Mark Gross said there are different regulations for non-transient use, schools and transient use, a person traveling by. The migration distances are met or exceeded and M. Gross said monitoring compliance is the Town's responsibility. Site plan questions on building gross floor area, size, soils, and wetlands were answered. The traffic survey questions were addressed by S. Pernaw **Attachment # 2**, concerning truck traffic, road closings for roadside clearing, the 10-vehicle queue line, traffic accident comparisons, and "disparaging remarks" made about the abutters traffic consultants. M. Gross said the Park is owned by the Town of Hampstead and the Town is the abutter. He questioned whether J. Forbes had been allowed to represent the Parks interest. The regulation, requirements and inspection of gasoline tanks were questioned. Once the gasoline tanks are installed, they will be inspected by the State. The distance is estimated to be about 285 feet to the closest tank. Concerning the migrations distances (of plumes), the site meets the state distance requirements and the use requirements of the DES. Mark Gross pointed out the length and width of the buildings noting this is a reduction in gross floor area from the 2002 plan. Any work done on the site prior to the submittal is inconsequential. Steve Pernaw highlighted remarks made in his letter dated October 12, 2012 in response to the Ordway Park letter. He said trucks were observed on Depot Road and the number was consistent with state averages on other legs of the

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intersection. There may have been line clearing on Depot road causing traffic to slow down but not deter the traffic. The second story space would be small and the HVAC systems would be located there. The drive capacity of the Dunkin Donuts drive-through was increased creating a better situation. Mr. Pernaw said the crash rate in the Forbes letter was not true adding the crash rate is 4.3 per year for the years 2009-2011 using average data from the Hampstead Police Department. The averages from 2002-2003 were at 7.5 per year showing a decrease in traffic accidents.

Chairman Clark asked the Board if they had any comments. Bill Weber asked to read a letter he wrote after the last meeting. **Attachment # 3**. Mr. Weber did not feel the applicant has supplied the Board with information. His research confirmed this premises. Mr. Weber cited the US Census showing growth in Hampstead and surrounding towns. This let him to conclude there was a corresponding increase in traffic and traffic accidents. B. Weber had previously asked the Board to initiate a separate traffic study. The Board did not act on that request.

MOTION

Bill Weber formally asked the Board to consider having a traffic study done by an independent traffic engineer chosen by the Board and at the Town's expense. Nick Cricenti pointed out the NHRSA's allow a Planning Board to have studies done for its' own information and the cost is to be borne by the applicant. Priscilla Lindquist seconded the motion. There was no further discussion and the Chairman called for a vote. VOTE YES Priscilla Lindquist, Bill Weber VOTE NO Dean Howard, Proctor Wentworth, Neil Emerson, The Chairman abstained. R. Clark said the motion did not gain a majority vote and failed. Emily Rease requested the members voting to state their reasons. Randy Clark said they simply were not in favor of having another study.

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Chairman Clark said he was hesitant to go forward without the permits being received. Neil Emerson said he was not comfortable either. Bill Weber said he was concerned the traffic study (of the abutters) was not received. Proctor Wentworth questioned why the Planning Board did not receive a copy. Priscilla Lindquist asked who did the study. Attorney Hogan asked to address the Board. Randy Clark questioned the Board on whether they would vote making the vote subject to the condition the receipt of the Department of Transportation permit be received.

Bill Weber said he would like to hear new information from Attorney Hogan. Mr. Weber added he would like to hear everything the parties here have to say. Neil Emerson wanted to wait for the DOT permit for a vote. Proctor Wentworth said he would like to hear it all tonight. Mark Gross said the well meets the requirements for public water safety. He gave the Board a copy of the permit from the State. Neil Emerson added he did not want to have any permits hanging. Mark Gross said the permit for the septic systems could not be issued until the wells were installed. The Chairman asked the Board if they wanted to hold the vote until the next meeting. There followed another discussion of the traffic permit not being issued. Mark Gross said the State told him there was an abutter threatening a lawsuit and saying there was another traffic study coming in. The State had given two weeks for the information to be submitted to them. They then extended the time to Monday at the close of their workday. No study was submitted. The drive permit was then held up because of an administrative issue requiring two permits according to William O'Donnell at the DOT.

Randy Clark announced the Public Hearing for Depot Development could be continued to November 5, 2011.

Bill Weber said he would like to hear from Attorney Hogan.

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Attorney Scott Hogan began by stating there were two issues left open. The Planning Board had denied the site plan 10 years ago. This site plan was not “materially different” from the last proposal and the Board must make that determination. The applicant has retail space, which will affect the traffic numbers. There is no retail space on the second floor. Mr. Pernaw said, the last time, the second story office space would have minimal effect on the traffic. This proposal of a Dunkin Donuts, a convenience store, and gasoline pumps were all traffic generators and the most or second most dangerous intersection in the Town. Attorney Hogan questioned whether the application was legal and if a study was done of the regional impact on aquifers, traffic. He said the Town of Derry should have been notified and shown up as an abutter. Mark Gross showed S. Hogan where Derry was listed as an abutter on the plan list.

Chairman Clark asked Board members if they considered the plan submitted for a July public hearing different enough to take jurisdiction. The Board wanted to hear from the abutters. The question remained whether the Board could make a determination without taking a vote. Bill Weber said the application should not have been considered until they had advice from Town Counsel; accident data was still coming; the nature of the business would overpower the area; the Superior Court decision focused on traffic alone; the specifics of the DOT driveway permit were not known, the proposal “materially different” from ten years ago; Dunkin Donuts was a “destination, and the prior submission was not “inconsequential”. Weber wanted a third party review. Stephen Pernaw said the road may have been closed to truck traffic, but trucks were recorded as using the roadway during the study time and the number of trucks recorded was consistent with the traffic norms. Neil Emerson said the road was not closed because it was not a cold year. The Selectmen’s minutes will be checked for accuracy on the road closing. The second floor has been removed from the structure. Attic space will be used for the HVAC systems.

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A demographic study for New Hampshire shows a general reduction in population. Attorney Hogan noted the subdivision and site plan regulations reminding the Board they may be stricter than the State on noise issues like from an outdoor speaker, and no real way to buffer the existing area homes. He referred to issues not addressed by the 2002 court case and mentioning many historic homes in the area. R. Clark said the Planning Board might base a vote on case law. S. Hogan said the Deering vs Tibbets finding was the planning board should "promote the general welfare". Adding every abutter understands this project may be a huge traffic generator. The scope and scale is not materially different. In 2002, the DOT wrote, "improvements are not without drawbacks altering the rural character..." Attorney Hogan reminded the Planning Board, 19 hearings were held the last time and considered the building too large for the site and would create diminutions in property values. The Board was asked if it had considered the regional impact. M. Gross said the site is materially different in architectural style, size, mass and there now being single story. He also pointed out the history of the area having gasoline stations. There are already many home businesses in the area and two other structures already are commercial, an old church and rectory.

MOTION

Randy Clark asked Board members if they needed to vote on whether the project was materially different from the 2002 proposal. The Chairman made a motion that the current project is materially different from the previous proposal. Proctor Wentworth seconded the motion. VOTE NO Priscilla Lindquist, Bill Weber; VOTE YES Neil Emerson, Proctor Wentworth. Dean Howard said he would not vote on the motion since he was not on the Board in 2002. D. Howard stated he felt that all proposals submitted deserved to be heard. R. Clark asked him if that meant he was abstaining and Dean said he was abstaining. The Chairman said the vote was tied and he would vote yes.

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The Chairman recognized Nancy Fulmore who said changes in the Town should be a betterment. Judge Lewis ruled the project created traffic issues and public and private safety issues. She said the Pinkerton Academy students were not counted in the traffic study. The letter presented to the Board is part of the record.

The Chairman recognized Erin & Chad Bennett. Erin Bennett began by saying she and her husband have a construction business at their home. E. Bennett said the danger of the intersection has been downplayed: 2010, 7 accidents, more than any other intersection in Town. She added the development would have a high impact on vehicular and bus traffic. The letter presented to the Board is part of the record.

Board Member Priscilla Lindquist presented the Chairman a letter from Police Chief Beaudoin. The statistics are 2008, 2 accidents; 2009, 4 accidents, 2010, 7 accidents, 1 a deer; 2011, 4 accidents recorded; 2012, 3 accidents. Randy Clark noted the figures in this report were slightly different from the previously reported accidents. This will be checked. The letter presented to the Board is part of the record.

Chairman Clark asked Janet Rabideau for her comments. She said she had researched her house (which abuts the proposed development) on Google Earth and presented the Board a photograph of the area. Ms. Rabideau had a copy of her survey plan (D-4713) and this was given to the Board. She said she was concerned with the impact the development would have on her property. The letter presented to the Board is part of the record.

Randy Clark, Chairman recognized Cynthia Neil. She told the Board she had seen an article written in 2002 and felt the denial was still relevant. It discussed the impact of traffic and safety, protection of the aquifer. C. Neil said the Rockingham Trail, which runs behind her home, has

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affected them with noise and traffic and she feared this would increase with the Dunkin Donuts and the gasoline station. She pointed out the purchase of alcohol and possible vandalism in Ordway Park. The letter presented to the Board is part of the record.

The Chairman invited Julia Forbes to speak. J. Forbes asked what the building height was and what the length and width of the building were. She said she was unable to find them on the plan. Mark Gross said the dimensions are shown on sheet 3 of the site plan. Julia asked the height at the highest point of the building. Mark Gross scaled it from the plan to be 28 feet. He said he would double check and make sure this was the highest peak on the building. The letter presented to the Board is part of the record.

Lorin Becker asked to address the Board and the Chairman recognized her. She was concerned with the health risk of being so close to a gasoline station. L. Becker provided a report saying there was a 4 times greater risk of getting leukemia. She considered this a health risk to the family drinking water. The letter presented to the Board is part of the record.

The Chairman Clark recognized Carlos and Shirley Paz. Ms. Paz told the Board they have a shallow dug well located at # 255 on the plan. She said it is approximately 137.5 feet from the center of Route 121. According to the DES ground water contamination plumes can travel as far as 300 feet. She added they have already had a problem with salt contamination. The letter presented to the Board is part of the record.

Chairman Clark asked Carla Marcotte to address her comments to the Board. Ms. Marcotte said she is concerned with the traffic on Main Street. The town center is quaint and this is a poor location for a Dunkin Donuts, and not what the town should have on Main Street. She asked if the gasoline station could close earlier. C. Marcotte asked if any research had been

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done on the effects such a mall could have on a rural area such as increased theft and alcohol use. M. Gross said he had not done any kind of a survey of problems created by an area market mall but would see what he could find out. The letter presented to the Board is part of the record.

Molly Allen, a local realtor, asked to address the Board and Randy invited her to speak. She commented the development would have a negative impact on the neighborhood and affect the property values. She cited increased traffic in the area, noise, gasoline pollution, littering along the roadways, increased light pollution, car and truck headlights, and putting pedestrian traffic at risk, as other problems. Ms. Allen said there were at least five other gasoline stations within five miles of the proposed complex. She did not want to see jobs created at the expense of the neighborhood. The letter presented to the Board is part of the record.

Mark Gross said he had located the property of Janet Rabideau as requested. He noted the lot line is 15 feet from the corner of the horse barn at the rear of the property.

The Board was asked how there could be gasoline pumps in a C-1 zone which prohibits outside sales. The outside ordering for a Dunkin Donuts was questioned. Nick Cricenti said drive through restaurants are not considered outside sales by definition. Randy Clark added gasoline sales are a specific permitted use in the C-1 Zone.

N. Emerson said the Code Enforcement Officer had told him the comment quoted in Julia Forbes letter was not correct. Chairman Clark said he would look into that.

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MOTION

Proctor Wentworth made a motion to continue the Public Hearing for Depot Development, Map 1, Parcel 18 to November 5, 2012. The motion was seconded by Bill Weber. VOTE YES Proctor Wentworth, Bill Weber, Priscilla Lindquist, Dean Howard and Neil Emerson. ABSTAIN Randy Clark. The Public Hearing for Depot Development is continued to 5 November 2012.

BOARD BUSINESS

- **Minutes and Adjourn** The minutes of October 1, 2012 were edited as follows: Page 2, Paragraph 3, Line 3 add "the plan" after "not find"; Page 4, Paragraph , add "Neil Emerson commented a newspaper article read "Conservation Commission snubbed", when they (the developers) were not required to go."

MOTION

Proctor Wentworth made a motion to approve the minutes of October 1, 2012 as amended. Bill Weber seconded the motion and the minutes were approved. VOTE YES Proctor Wentworth, Bill Weber, Priscilla Lindquist, Dean Howard and Neil Emerson. ABSTAIN Randy Clark.

MOTION

Proctor Wentworth made a motion to adjourn the meeting at 9:20 P. M. Priscilla Lindquist seconded the motion. VOTE YES Bill Weber, Priscilla Lindquist, Dean Howard, Proctor Wentworth and Neil Emerson. Chairman Randy Clark declared the meeting ended.

Respectfully submitted,

Susan Hastings, Secretary