

**TOWN OF WEBSTER
PLANNING BOARD
MEETING MINUTES MARCH 20, 2014**

At 7:02 p.m. Chairman Jere Buckley convened the regularly scheduled meeting of the Webster Planning Board.

Present were Chairman Jere Buckley, Vice Chair Member Sue Roman, Selectman Roy Fanjoy, Members Sue Rauth and Lynmarie Lehmann and Alternate M.J. Turcotte.

The next order of business was to review the draft minutes from the February 20, 2014 meeting. Chairman Buckley had one correction: on page 2 a little more than halfway down the page, **vis-a-vie** correct spelling is **vis-à-vis**. Member Roman made a motion to approve the minutes of February 20, 2014 with that correction; seconded by Member Rauth and approved unanimously as amended.

The next order of business was to review/sign if approved, a Voluntary Merger for Clayton & Pamela Mack, 90 Centennial Drive; PIDs 10-5-10 and 10-5-11. A second Voluntary Merger had been submitted after the PB agenda had been published. The application was from the Society for the Protection of NH Forests, 54 Portsmouth St., Concord, NH; PIDs 7-20 and 7-24. The Board looked at the corresponding tax maps to verify the lots for each application were abutting lots. Member Roman noticed that the lots owned by the SPNHF were not shaded in green on the tax map to indicate 'Conservation Easement'. After a brief discussion, Chairman Buckley signed/approved both Voluntary Mergers with the support of the Board and Mrs. Larson, Town PB secretary will speak with Mrs. Jones regarding the conservation status of the SPNHF owned lots.

The next order of business was the continued discussion regarding the requirement for COPART to do a site plan review. Chairman Buckley presented to the Board his opinion regarding the 'COPART' situation. He began with the history of how the situation evolved when COPART first came to Town. At that time approximately two years ago, the Select Board had decided COPART's business to be a continuation of the John Little junkyard, therefore 'grandfathered' and not requiring a special exception application to the ZBA. Chairman Buckley stated the COPART operation had a dramatically different scope and character from the John Little junk yard. He pointed out that the Mellen Company was required to apply for a special exception and a site plan review to add on a garage. COPART proposed a more dramatic change than that and should have been required to follow the same procedure. Chairman Buckley stated most everyone has agreed that in retrospect the Select Board at the time made an ill-advised decision in not making COPART comply with the special exception application process. He stated that COPART has been operating for close to two years without the Town raising any meaningful objection which implies their approval of the business.

Chairman Buckley continued his presentation with discussing the junk yard license issue. RSA 236:114 requires junk yards to be licensed. Per RSA 236:115 the junk yard license application from the Town should be accompanied by "a certificate from the board of adjustment" the proposed operation is not "contrary to the provisions of the zoning ordinance." There is no reference to a commercial exception or to any involvement by the Planning Board. COPART did apply for a special exception and was granted the commercial exception at a ZBA public hearing

on January 14, 2014. Chairman Buckley stated that commercial exception somehow provided the Select Board with the “certification” required by RSA 236:115 and therefore, the Select Board granted the junk yard license pending any rehearing or subsequent action by the ZBA.

Chairman Buckley asked, “Is a Planning Board Site Plan Review required?” After the ZBA issuance of a special/commercial exception there has always been a site plan review. Chairman Buckley referred RSA 674:43 wherein the Planning Board is *authorized* to require site plan reviews – not mandated. The decision is solely the Planning Board’s. Chairman Buckley stated that if the Board were to conduct a site plan review, the Board would need to make one of three decisions: 1) site plan approval; 2) site plan approval with conditions; 3) denial of approval of site plan. In his opinion, he did not want to do a site plan review that would be a “sham (with the outcome predetermined)” and he sees no reason to suggest that the Board endorses decisions it thinks were ill-advised or to risk being considered as complicit in those decisions.

In conclusion, Chairman Buckley offered an alternative to the site plan review. He stated a site plan review would give the Board a baseline against which to evaluate future changes, but why would this need a formal review? He suggested the Board require COPART to provide a detailed description of the current site to include: a site drawing more professional than the hand sketch that was submitted with the special exception application; information on the items on the *Checklist for Site Plan Review Application*; site photographs; and more information the Board would deem necessary.

After a very brief discussion, Chairman Buckley informed the Board he did not write a letter to the Selectmen for clarification on their position telling COPART they did not have to do a Site Plan Review. Member Roman corrected the Chairman stating the letter was not for that reason, but to ask permission to contact Town Counsel per the Town ordinance. In any case when Chairman Buckley contacted Member Roman on the subject and she told him that she and Member Rauth had an in depth conversation with Attorney Paul Sanderson of NHMA.

At this time Member Roman read *RSA 236:124. Effect of Local Ordinances*. She stated it meant that local ordinances will control if there is a conflict. She stated there is the issue raised about whether there is an argument of municipal estoppel, meaning that the municipality did not act to ask COPART or to enforce against COPART any of the zoning ordinances to have them go before the ZBA. Member Roman stated that Attorney Sanderson’s opinion was that even if estoppel fully applied to allow COPART to use the site as the junk yard, having never been before the ZBA for a commercial exception and never having a site plan review, that the Town’s ordinances are still protected under *RSA 236:124*, and that the Town’s ordinance requires a site plan review and that the waiver in the ordinance did not apply. Member Roman stated a commercial exception was granted, the junk yard ordinance does not preclude operation of the Town’s ordinance and this is equal treatment of people in Webster. She added that in Attorney Sanderson’s opinion there should be a baseline. Member Roman stated the Board has no way of judging if there is any further expansion because of not having a site plan review. She stated even if the Board looked at runoff or lighting or screening as listed on the checklist, that would not be ‘pulling the rug out’ from under COPART. She stated she was not proposing revisiting the road issue or the hours of operation. Member Roman proposed to look at other things in the site plan review that have not been looked at and the Board ask for a site plan to create a baseline. The Board has a right to know what is going on behind the fence and to know what the site looks like; to know if the site is in concert with environment requirements and other requirements of the

Site Plan Review Regulations. Member Roman stated in her opinion the Board has the legal right and the legal obligation under the Board's regulations to require a site plan review. After a brief discussion, Member Rauth added that Attorney Sanderson said having a site plan review may protect the Town. A discussion about traffic impact analysis and road conditions ensued.

Member Roman made a motion for the Planning Board to authorize Members Rauth and Roman to go the Select Board and request a retraction of the direction to COPART not to do a Site Plan Review and ask COPART to do a Site Plan Review as required under the Zoning Ordinance to the extent of the Planning Board's legal authority. Member Roman stated the Planning Board will have to decide if there are any traffic issues it can deliberate or if it is estopped from those. The Board will have to make that decision to the extent of the Board's legal jurisdiction to do it. The motion was seconded by Member Lehmann. Before the vote, Member Lehmann suggested the Board take a walk-through with John Little or the subsequent prior owner to find out how far *they* had expanded. Member Roman stated if that was within the Board's purview, she was in agreement. The motion passed 4 votes in favor; 1 – vote, Chairman Buckley, not in favor of the motion.

Following a brief discussion, Member Roman stated the Town does need some type of traffic/safety analysis. Chairman Buckley suggested contacting DOT for advice and to look into funding. Central New Hampshire Regional Planning will be doing their annual traffic count, too. Mrs. Larson will ask CNHRP if they can do an axle count as opposed to vehicles.

The next order of business was discussion of future plans for 2015 version of withdrawn 2014 Amendment #5 which dealt with definitions of 'lot line', 'frontage' and 'street'. After a brief discussion, Member Roman stated her goal would be to fix the merger issue via the Subdivision Regulations and then consider whether or not to fix lot line. Member Roman would like to get feedback from the Town. Chairman Buckley stated his concern was there was no definition of 'lot line' in the Zoning Ordinance. After a brief discussion, Members Rauth and Lehmann volunteered to work on improving the withdrawn amendment regarding a lot line and other definitions.

At this time the Board discussed Warrant Article 5 – Definition of Building which failed to pass on Town Voting day, March 11, 2014 by 10 votes. Chairman Buckley stated he presumed that the 'impact on tax bills' may have scared voters; in actuality the article does not have any impact on taxes. He added that he heard from people the article was so extensive and formidable looking they did not want to read it. Brainstorming ensued regarding how to better inform the public. Member Roman suggested printing a request for feedback in the Grapevine and have a Planning Board Suggestion Box at Town Hall. Member Lehmann also suggested doing a mail survey similar to the one sent out by the Police Advisory Committee. Member Roman suggested there be more explanations done in the future; have handouts available about the warrant articles at the Town Budget meeting. Member Rauth suggested a Planning Board table with a Planning Board member at the Town elections to help with explanations for the residents. She added the Board should start the process now; put an article in the April's Grapevine asking for feedback and informing people about the suggestion box in Town Hall. Member Lehmann suggested putting something on the website for comments. Chairman Buckley added that some of the information from a survey could be used for the updating of the Master Plan. Chairman Buckley will submit an article to the Grapevine asking for feedback from the public and informing them about a Planning Board Suggestion Box at Town Hall.

The next order of business was the continued review of Draft #4 of the proposed Driveway Regulation amendments. Due to the lateness of the evening, the review was tabled until the next Planning Board meeting on April 17, 2014.

At 8:56 pm Member Roman made a motion to adjourn; seconded by Selectman Fanjoy and approved unanimously.

These minutes were approved as amended at the Planning Board meeting of April 17, 2014.

Susan Rauth, Chairman of the Planning Board

POSTED: April 18, 2014

Approved as Amended