

**CANDIA PLANNING BOARD
MINUTES of December 18, 2013
APPROVED**

Present: Sean James Chairman, Ginny Clifford, Vice Chair; Judi Lindsey; Al Hall III; Ken Kustra; Fred Kelley, BOS Rep; Dennis Lewis, Road Agent; Dick Snow, BOS

Absent: Kim Byrd

Chair James called the meeting to order at 7:00 pm immediately followed by the Pledge of Allegiance.

Minutes November 20, 2013

A.Hall **motioned** to accept the Minutes of November 20, 2013 as amended. J. Lindsey **seconded**. S. James, G. Clifford, A. Hall, F. Kelley, J. Lindsey **were in favor**. Ken Kustra abstained.

Other Business

Informational Boundary Line Adjustment; 272 Chester Turnpike Map 411 Lot 067 Brien & Linda Brock and 298 Chester Turnpike Map 411 Lot 068 Roger & Chantal Demanche Trustees

Jim Franklin, surveyor and Brien Brock of 298 Chester Turnpike were present. J. Franklin said that are seeking input from the Planning Board on a Lot Line Adjustment between Map 411 lots 068 and 067. He said lot 67 which is owned by the Brocks is about 33 areas and lot 068 which is owned by Roger and Chantal Demanche is about 31acreas. What they would like to do is swap some land which will be approximately 59,000 sq ft conveyed from Demanche to Brock and about 81,000 sq ft will be conveyed from Brock to Demanche. The land being conveyed is shown in red cross-hatched area of parcel A and parcel B along with the existing lot lines and the proposed lot lines. J. Franklin continued saying this straightens out the lots. He said the lots go back to some surveys and subdivision that were done by Roland Therian, Bill Gunnerson, Jack Hills, and what they did is they kept adding to the existing plans and on their drawings they made notations the dimensions were from plans by others. He said he went out to do some staking of the lot line between the two parcels found some of the outbuildings were a little too close and rather than just leaving it and just ignore it as no one will not know the difference might, he said they should straighten it out now and that is why they are here tonight. He said the owners have agreed to do this LLA. The informational sketch is close to what they intend and until they get the actual boundaries done he won't know the exact configuration.

G. Clifford asked about the buildings being to close and J. Franklin said they are too close to the lot line based on survey work done so far. He said on lot 68 in the lower right hand corner there is a strange zig zag in the lot line that shows on the tax map and he understood once the survey done was done because there is approximaely a 72 foot error in the overall frontage. He said in the 70's 80's Chester Turnpike was dirt and survey equipment being what it was he is not surprised with the error and said now is the time to get things straightened out. J. Franklin said the westerly abutter Map 41 lot 1 is Manchester Water works and doesn't anticipate any problems with them. He said he found the corner markers for lot 66, 65, 64, 63-1 and also found the front lot corner marker between lots 69-1 and 68 and what he is trying to do now is complete the perimeter of the parcels to make sure that the bounds are where they are supposed to be and if not put new dimensions on them.

A. Hall said that will make a much cleaner lot line. J. Franklin said part of this goes back to the early original lot layout in Candia and said by looking at the overall tax maps you can see where the original 88 acre lots were and these lines were all originally supposed to be parallel. He said but in this case once the owners go in there it changed and believes it was the Sargent family. B. Brock said he bought the back piece off the Sargent family. J. Franklin they owned across the turnpike too and the same surveyor did the work for both sides of the road and they have lines that are all twisted around but it is not a concern of his on the other side. He said he is working on straightening out this side.

G. Clifford asked how much frontage was on the Demanche property as it is hard to tell with the zig zag. Brock said he had about 500' and said the Demanches's have much more. G. Clifford said she knows there is plenty of frontage and was wondering if there is enough frontage for two lots or 3 lots. B. Brock said there are

covenants on both properties that does not allow for subdivisions but whether it is still active or not he doesn't know as it has been well over twenty years ago.

Chair James said it is just an informational. F. Kelley said then they are going to come back with an application. J. Franklin said he will be coming back with the LLA application and said his concern was under the subdivision regulations for a LLA only a certain amount of land can be transferred. Chairman James said the maximum is a lot size which is 3 acres. He said the proposed LLA is less than that so a waiver would not be necessary. F. Kelley and Chairman James both said they do not see any issues. Chairman James said it will help straighten out the lot lines. J. Franklin thanked the Board for their time.

Waiver to extend Conditional Use Permit; Candia Crossing Elderly Housing Development; Map 406 Lot 016 Candia Crossing; Owners: John Cole & Scott Komisarek.

John Cole, Scott Komisarek owners, and John Cronin of Cronin Bisson & Zalinsky Law Firm were present. Chairman James said this case goes back a few years and at the time he was an alternate to the Board and he did not sit for this case but noted that Judi Lindsey was on the Board at that time. He said the original development falls in the Zoning Regulations under Section 5.05 Conditional Use and follows either the Site Plan Regulations or Subdivision Regulations depending on what they do and he feels it falls under the Subdivision Regulations. He said originally it had fallen under the Site Plan Regulations when they had multifamily units but they were taken out of the plan. He said there was a ZBA case dated January 1, 2007 where they were allowed to have 43. He said they had to get a variance to allow condominium form ownership with all the homes on one lot which they were granted. He said they received a conditional approval December 19, 2007 and a preconstruction meeting was held April 28, 2008. He said then some construction was done and continued there was a bond put in place. The bond was eventually reduced after meeting criteria with the town engineer and the town and has been in place ever since. S. James said this is a brief overview which brings us to today. He said they have sent a waiver request letter to extend the approval.

John Cronin of Cronin Bisson & Zalinsky Law Firm introduced himself saying he was representing the owners of the project. He said their firm does a lot of land use work around the state. He said he met with owners and reviewed their project and some of the history that was just detailed. He said like a lot of developers that got projects approved since 2006 when the market peak was reached who because of the economic conditions couldn't justify building these projects. He said they have a lot invested in engineering and approvals and site work and want to go forward and continued since they have done some active and substantial investment, some roadwork and culverts it would refer to common law vesting. He said his recommendation to his clients was to ask for the time period to be extended which is being done frequently throughout the state for similar type projects. He said his hope is they can build this project out as proposed but they also have know if they make changes that they would have to come back before the Board and amend the plan as in ordinary course. He explained that in the whole legislative history active and substantial and substantial completions deadlines were put in place to prevent people going and develop projects developed say as residential and they sit on these projects for 10 years in that time an industrial complex comes up around the project and it is no longer consistent with the surrounding environment and that is generally why there are time frames. He said what he has seen here is the environment has stayed consistent around the project and in his history has had no problems getting extensions except for one project that was overturned in court because it was proven that the environment had not changed. He said he has done approximately 30 cases. He said no one wants a project that is half built and towns do not want to go in and pull bonds and start doing road work if they don't have to providing there is no negative aspect to health safety and welfare. He said as you know the applicants are responsible citizens and developers who want to construct a nice neat project. In the early 90's the 55 and older concept was not well received but now people getting to 55 are more receptive and see the advantages of a community like this for example not shoveling snow. He said he did a project down in Windham and is selling well.

J. Cronin said he is requesting a 2 year extension so they can get the project up and going in that period of time. Chairman James said he had checked with Town Counsel and they do have the authority to extend the waiver which falls under zoning 5.04.10 where there is a waiver process they can follow. He said he did want to comment on one of the statements in their letter about active and substantial development saying that hasn't been decided and he knows they threw that out there and said in his own opinion they are not there yet and they do not have to go down that road. J. Cronin said he noted it is in his letter and as it is his duty to

representative his client and said he would be remiss if he didn't mention it. He said active and substantial development is usually an analysis of the amount of the expenditure and the balance test that is fact specific. He said he mentioned it and said hopefully they do not have to talk about it at all tonight, he just wanted not to mention it and if the extension is approved it is a non issue. Chairman James said he does agree with him and said again it hasn't been decided yet. J. Cronin said that is affair comment and they are not looking to say one way or another and you have the right to reserve your right and at the appropriate time to make your decision.

A.Hall asked when the waiver expired and Chairman James said tomorrow December 19, 2013.

Chairman James said the NOD had 12 conditions. He said in discussion with town counsel said again it goes back to active and substantial development but putting it aside the approval runs out in 6 years which is tomorrow.

J. Cronin said even with the best of plans, it is a lot different doing a project now then in the 60's. He said it takes a lot of time and said as our president said when they were doing a lot of funding for all the road construction it is important to have shovel ready projects so when the economy does break people get going quicker and gets people employed and gets the economy going.

G. Clifford asked Chairman James to read the conditions of their original approval. Chairman James read the first condition from the NOD dated 12/18/2007, *"1. A new set of plans must be presented showing elimination of the multifamily units and the substitution of duplex or single family units to meet the 43 unit approved density."* He said with the multifamily homes it becomes a site plan where there was discussion at the time of approval to eliminate the multifamily buildings and change them to single or duplexes. And he continued, *"2. All revisions suggested in the letter from Stantec Engineering dated December 19 should be included on the plan as required. Stantec will notify the Planning Board when they have a final review of the plans. 3. The plan should also include the case number and date of the variances granted by the Candia ZBA.4. The plans will not be signed until the Board is satisfied that all conditions have been met and all required state and federal permits are secured or forthcoming. 5. No construction including cutting of trees or logging shall take place until preconstruction meeting is held with all of the parties including the Town Building Inspector, Road Agent, Fire Chief and Town Engineer and applicant's representatives."* He said there was a preconstruction meeting held on site. He said from a letter written by Bill Hallock, the Building Inspector at the time the intent of the road being put in was not to be road development but just an access to the back part of the lot for water. G. Clifford asked so as far as the road goes we do not have any engineered plans and this road is just an access road? Chairman James said there are engineered plans but not final approved plans and the way it was set up was their intention was an access road but during that summer it got built to higher standard. He asked them if it was fair to say the road location is correct. J. Cole said it is exactly as the plans shows and follows the center line all the way to the back where it is supposed to be. A.Hall said that would save time and money. J. Cole said exactly and everything they did to get across the wetlands met the specifications that the town required as far as the box culverts and compactions that have been all recorded with testing done for all the compaction around the culverts as required which was almost a \$100,000 for all of this work. G. Clifford asked if Stantec has signed off on the work. S. Komisarek said Stantec was there throughout the whole process. Chairman James said did they sign off on it and S. Komisarek answered they did all their inspections. A. Hall said it is more than just a tote road. J. Cole said yes it was very costly to get across the wetlands first which were 700 to 800 feet in.

Chairman James said part of the letter dated May 8, 2008 to Mr. Cole from Bill Hallock said at the end of it talks about a meeting at the site where Fire Chief Rudy Cartier, George Denoncourt Road Agent Dennis Lewis, Mr. Cole, S. Komisarek, Tony Timbrell PE from Stantec, Eric Reisch (Windsor Industries) and Eric Twardowsky (Windsor Industries) were present. Chairman James read at the end of the letter, *"I agree to allow adequate tree cutting and grading to gain access to the well field locations for the drilling rig with the rig tender. This is not road building or site preparation, it is allowing access so that the final permits and approvals can be obtained to satisfy the other conditions of the Revised Conditional Approval so that final site plan approval can be granted for this project"* He said it seems from the records the intent wasn't supposed to be developed to that level and yet it was. S. Komisarek said the only way they could get back there with the stream was to do the box culvert wetlands crossings according to the plan. J. Lindsey said it sounds like you were doing more then you were supposed to and it sounds like we agreed to an access road but whoops it became a really big substantial road and that the Planning Board has not signed any plans with that road on it. Chairman James

said she is correct, the final plans have not been signed but yet the permanent structures are in. J. Cronin said the conditions of the approval will still apply.

D. Lewis said when the road construction started the engineer and himself were put in an awkward position with no approval from the Planning Board with no signed plans and they were approving things off a plan that was not signed which they really did not have the authority to do. He said it was all done with compaction testing and done properly. He said had the plans been signed there would be no issue. G. Clifford said the Board would not sign the plans until all the conditions were met right? D. Lewis said yes and continued this work did not need to take place to meet those conditions. He said they usually don't allow the work to be started unless they have signed plans because if the plans change it would put them in a position to defend themselves saying it was done correct on plans that were not signed.

J. Cronin asked if he could suggest a solution saying they could make a condition that no further work on the road be done until the plans are approved. He said the purpose of the extension is to be able to get the plans finished and signed. He said there is no intent to harm or hurt anyone here. J. Cole said there was no other option to gain access across the wetlands. J. Cronin said I am sure they did not want to spend the money if they could have got in another way. Chairman James said he had a good suggestion. S. Komisarek said there was no way to meet the conditions without gaining access to the back for the well locations. Chairman James said they could have made a temporary stream crossing instead of a \$100,000 box culvert as they could have spanned the stream with a temporary stream crossing.

G. Clifford asked J. Cronin about his reference to workforce housing. J. Cronin said there are a couple of 55 and over projects in Windham that are doing pretty well and said it has nothing to do with workforce housing. He said he was showing advancement in the economy and said there is no workforce housing in this project.

Chairman James continued with the NOD conditions, "6. *Bonding will be required in an amount estimated by the Town Engineer and accepted by the Planning Board who will recommend the Board of Selectmen accept the bonds. Bonding for the Road, the utilities, and fire protection will be included.*" He said he said it has been in place from day one and in 2008 it has been reduced which was reviewed and approved by Stantec and the town. He continued, "7. *Mr. Cole agrees to monitor Mr. DiMaggio's well and Mr. DiMaggio will provide Mr. Cole with a written schedule of previous problems with the well.*" Chairman James said there are letters in the file showing Mr. Cole reached out to Mr. DiMaggio about his well.

Chairman James read, "8. *A copy of the Homeowner Agreement is to be submitted for review by the Town Attorney at the applicant's expense.*" He said that is done and in the file. He continued, "9. *The applicant agrees to be responsible for all inspection fees as required.*" He said it is not applicable. He continued, "10. *The applicant also agrees to all of the standards listed in the 27 general standards in Section 5.06 of the Zoning Ordinance except to the extent as granted by the waiver from the Zoning Board of Adjustment's decision (Case #549 11/27/07).*" 11. *No building permits will be issued until all of the conditions have been met and the plans are signed by the Planning Board.* 12. *No certificate of occupancy shall be issued until all fire and safety requirements have been met.*" He said he believes to satisfy the fire requirements; the homes were all going to be sprinklered as opposed to a cistern or paying into the fund which was the original plan. J. Cole said there was discussion afterward that may have changed that from a recommendation from the fire chief at the time that since they were going to be required to have a large water storage for the community that could be used for fire prevention.

K. Kustra asked when the last time the property was looked at and has it changed. J. Cole said they went up and took pictures on December 4, 2013 and said the site is very stable. J. Cole said they had to comply with DES testing in 2010 which they did and they have a letter that was copied to the Planning Board and Conservation Commission. J. Cole said he submitted a series of pictures to counsel taken on December 4, 2013 and he couldn't see any change saying the swales are the same and nothing showing crossing beyond the silt fencing in fact he said it has grown up with a lot of wildlife present. K. Kustra asked if would see saw any changes if extended for two more years and J. Cole said as far as the stability absolutely not. A. Hall said that is why it was built. J. Cole said there was a severe issue with the property when they first purchased it and Dennis Lewis can attest to it when they had a heavy rain back in 2006 and there was a twenty foot wide 8 inch stream that ran off high street right onto the property. He said there was a lot of contaminated water which was address and cleaned up and since that time since they put the rip rap swale and culverts in and Carleton Robie could attest the pond near the library is much cleaner now than before the construction.

Chairman James talked said if they did approve the extension one of the conditions could be no construction on the site until signed plans are in place and another condition would be a final set of plans be submitted for review. He said there were some proposed changes that haven't been reviewed as the well locations changed. J. Cole said there was a final set of plans that were submitted. S. Komisarek said the plans did not have the well locations but everything was changed including the triplexes were removed. J. Cronin confirmed that they would update the plans to show the wells. J. Cole said his understanding of the triplexes was different he thought if you go back to the minutes when the approval was granted in 2007 the basis was something to do with a maximum 800 feet you couldn't put triplexes in and they agreed at the time because the triplexes were at the back of the plan and the changes were made on the final plans that were submitted. Chairman James said that is correct on the triplexes. He said there was a letter from Stantec dated 2008 that the well location was moved and if it did happen, they would have to relocate several of the homes. J. Cole said that is not a well location.

K. Kustra asked if they intended to say with the 12 conditions or add some or eliminate some. J. Cronin said they would stay with the conditions with the additions that were suggested by the Chairman on no construction until signed plans. He continued that many of the conditions have already been satisfied and the ones that aren't certainly, they will abide by and are not requesting any waivers. Chairman James said the Bond is in effect until next August and want to see that continue. J. Cole said they renew it every year.

Chairman James said he wanted to bring up the question of active and substantial development when this came before the Board but there wasn't a definition in the regulations and has since been added in 2010 which doesn't apply to this project. He said he would like to have discussion on this. He said if we are here in two years we will not be arguing what this. He said the way he views it and how it reads in the subdivision the road is complete through final wearing course and all associated drainage fire protection would be complete and again if it comes to two years and it has not happened they could certainly come back for another extension. J. Cole said they had planned to do the project in phases and is the only practical way to proceed for a development like this.

G. Clifford asked building it in phases is different than having it all planned out in advance and continued are you saying it would be the phases. J. Cole said they would present a site plan but what he is saying is different. Chairman James said what he is getting at is what is active and substantial development which you could talk about for days and for example if they pave 10 feet in and say they are done which would not be reasonable short of building the whole road what is reasonable.

J. Cronin said from his experience determining active and substantial development has always been case by case analysis under the old Brick master which is a balancing test where you weigh your expenditures including your soft cost, engineering costs and what you have actually spent in comparison to total value of the build out of the project. So say for example the infrastructure is \$500,000 and you go out and spend \$10,000, the courts will say that does not meet the active and substantial development test. But say you spend \$100,000 you are getting pretty close. He said because of new state statutes it says towns can define what active and substantial development is but most ordinances have a catch all determined by Planning Board so the Planning Board can deviate from that. He said what Mr. Cole is saying on a project like this economically peaking it would be so expensive to build all of these roads first and not have anything to sell because the road construction is so expensive. He said looking at this plan because of the topography and terrain there is a lot of cost at \$300 a foot just to get up to where you can sell a couple of houses. He said you generally try your best to get some revenue out of the houses. J. Cole said you must understand what they ran into in 2010, they thought the plan was moving along fine but all of sudden there was an excess of inventory for 55 plus which destroyed the market and they have been waiting for market to come back. J. Cole said the reasons they came forward this spring for the loft was to reduce the footprint but nothing would have changed not even the roof line.

Chairman James said he liked the idea of another condition of submitting a phasing plan along with the revised plans. J. Cole said the start is the big problem as it is a long way to get up and across the wetland to begin work on homes. J. Cronin said ideally you like to see a lot of houses in the first few feet but unfortunately you cannot change the topography so deal the best you can. J. Cole said they have every intention of proceeding in the beginning and had even asked for temp power utilities which have been approved by PSNH ready to go.

G. Clifford asked if the applicant where to come in with different plans when would they have to start all over. A. Hall said this is a request for extension not to change the plan. Chairman James said they are asking for an extension on the conditional approval as the revised plans is one of the conditions and if granted they would come back with the final plan and if it is substantially changed they would have to start over. A. Hall said they are asking to ride along with the market a little while longer. J. Cronin said rather than kill this tomorrow and waste their investment they want to protect the investment and want to do everything properly and that is what they are asking tonight. He said they are not asking to waive any conditions to avoid submitting plans.

G. Clifford said if I were the applicant I wouldn't want to away and dig it all up and if the Board were to approve a two year extension they could either build out and if I were the applicant I would have some time to come up with a new plan and would not have to rip out the road. J. Cronin said as far as ripping out the road the bond is ideally in place to protect the public health, safety and welfare so if they did excavation that had erosion that bothered wetlands or something came onto high street and made dangerous use the bond money would be to fix it but I have never seen a case where a town goes into private property and starts digging up things that exist that you could otherwise build. A. Hall asked J. Cronin how much experience he has had in this area of law and J. Cronin replied over twenty years. He said he really doesn't want to go there if this project dies really hoping if the two years are granted they will make a beautiful project they are proud of and the town is proud of. Chairman James opened the discussion up to the audience for comments or questions and hearing none asked for a motion.

A.Hall **motioned** to a grant a two year approval with conditions of a revised set of final plans shall be submitted for review and approval by the Town and Town Engineer. The final plans shall include all conditions from the 12/18/2007 conditional approval, changes to proposed well location (if applicable) and phasing plan for completion of the project (if applicable). No construction shall be take place on the property until revised final plans are approved by the Planning Board. All conditions from the NOD dated 12/18/2007 continue to apply and must be met by the applicant. The current bond shall be maintained on a yearly basis. . F. Kelley **seconded. All were in favor.** Motion carries.

J. Cronin thanked the Board and wished everyone a Merry Christmas and Happy New Year. Chairman James said they will get the NOD early next week.

Capital Improvement Plan update

Chairman James asked the secretary to send around projects listed on the CIP to rank to send to Stantec to finish the CIP. He said there has been talk on and off of having a CIP committee and if that happens they can certainly amend the CIP later and re-rank the projects.

A.Hall **motioned** to cancel the meeting on January 1, 2014 due to lack of applications and it is a holiday. J. Lindsey **seconded. All were in favor.** The next scheduled Planning Board meeting is January 15, 2014 at 7pm at the Town Hall.

Chairman James announced the ZRRC meeting is immediately following and everyone is invited to stay.

F. Kelley **motioned** to adjourn at 7:55pm. A.Hall **seconded. All were in favor.**

Respectfully submitted,
Sharon Robichaud
Land Use Secretary