

**CANDIA PLANNING BOARD
MINUTES of February 18, 2015
APPROVED
Public Hearing**

Present: Sean James, Chairman; Albert Hall III, Vice Chairman; Ginny Clifford; Michael Santa; Judi Lindsey; Boyd Chivers BOS Rep Alt.; D. Snow, BOS

Absent: Ken Kustra

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

Minutes January 21, 2015

A. Hall **motioned** to accept the minutes of January 21, 2015 as presented. G. Clifford **seconded**. S. James, G. Clifford, A. Hall, M. Santa, B. Chivers **were in favor**. J. Lindsey abstained. **Motion passed (5-0-1)**.

Chairman James said a motion was made at the January 21, 2015 meeting on approving the minutes of September 17, 2014. He said getting the original quorum together to vote on the minutes has been difficult so last month himself, G. Clifford and A. Hall voted to approve the minutes contingent on J. Lindsey approving them via email and he was supposed to contact J. Lindsey by email which was not done. J. Lindsey said she agrees to approve them.

PUBLIC HEARING

Capital Improvement Plan Update 2015-2010

Chairman James opened the Public Hearing on the Adoption of the updated Capital Improvement Plan 2015-2020. He read, "*Candia Planning Board in accordance with RSA 675:7, will hold a Public Hearing on Wednesday February 18, 2015 at 7:00 PM in Candia Town Hall, 74 High Street, to consider the following: Adopting the Capital Improvement update 2015-2010.*"

Chairman James said the CIP became out of date and the Board on two occasions had extended the plan and meanwhile they have been working with Stantec to update it. He said they had waited to update the CIP at the end of 5 years and suggested they at least update the projects and cost portion on an annual basis to keep it current. He said it didn't really change much other than updating the projects. He asked if there were any questions or comments from the Board then he asked if there were any questions or comments from the audience.

D. Snow said he is strongly in favor of the Board adopting the updated CIP and he said he was pleased to hear that they are thinking in terms of updating on an annual basis. He said the CIP is a very important part of the planning process. He said if you read the introduction it explains the purpose of the CIP and he read from page 2, "*Provide a necessary legal basis for the development and proper administration of the Town's impact fee system (RSA 674:21.V. (b)).*" He said if the update is not adopted the town would not be able to adequately defend impact fees in court which means the money that is sitting from impact fees in the accounts in the town could theoretically be taken out and retained to the people who paid in.

D. Snow said he came from a larger community to a smaller community on January 1, 1961 and saw on the ballot that year about planning and zoning for the Town of Candia and he wondered why are they doing this here and thought it has been wonderful ever since and he has voted for everything since then except for the elderly housing and the elimination of the cluster housing which he thought was a large mistake. He said the CIP is part of the planning and zoning process and depends on its value the whole process by the Master Plan. He said the Master Plan is your basis of what it is you want to do and gives you the legal justification for any of the ordinances that are made whether it is zoning, planning, subdivision, code enforcement all of this is part of the planning process supported by the Master Plan. He said from the first MP to what they have today there has been two important sentences one being they want to maintain

the rural character and second want low taxes. Those two are mutually exclusive. He said if you want lower taxes you will not be able to maintain your rural character. If you want rural character you will have to pay more taxes. He said recently they have fought a battle to get funding for the Master Plan but recently within the Town of Candia some individuals have become interested in development from the business standpoint as opposed to residential development. He said there is a group interested in doing some planning and making some changes which are not reflected in the CIP or existing MP. He said his hope is to be involved in the planning process and hopes the Planning Board gets involved too and they end up with a Master Plan that supports not just the wishes of people who came to the master planning process. He said it is a lot of work. He said stuff that will be happening tomorrow is not in the CIP and stuff that should have happened in the past is not in here so the CIP will have to be updated after the MP gets updated. He said he remembers originally the land purchased where the library was to expand the school or a community center but it didn't happen and they still do not have the things they need for the school. And because they could not get a community center a group of people in town said they need room for their kids to play sports and they built the CYAA on their own and now they fight the fight on how do they fund this. He said the Town of Candia has a recreation budget of zero and other towns have extensive recreation budgets. He said they need to satisfy the needs of all these groups. S. Snow thanked the Board for listening to him tonight. Chairman James thanked him and said he appreciates the comments and support.

B. Chivers had a question on the horizontal bailer listed in the CIP on page 24 at a cost budget of \$100,000 to be bought in 2019. He said they Board is going to vote on purchasing one this week. He said the bailer at the recycling center is on its last legs and is this, the same bailer. He asked when the annual update is done next January will this will be taken out of the CIP if it has been replaced. Chairman James said the general process is that questionnaires will be sent out to all the department heads and the departments would list projects and amounts and updates will be made yearly.

B. Chivers said in 2020 as listed in the plan they are still spending \$150,000 to update roads. He said in 5 years it will probably be going to cost more than \$150,000 unless you do a shorter distance each year. He said \$150,000 doesn't go as far as it used to go and suggested adjusting the numbers more carefully to reflect inflation on road construction projects. He asked do they adjust the numbers for inflation as he is seeing round numbers all through the document. A. Hall said he understands that the numbers are not cast in stone and they are just numbers and will be updated every 12 months and there will be another set of numbers. B. Chivers said appendix D shows hard numbers. M. Santa asked what the cost of the bailer they are going to approve next week and B. Chivers said around \$89,000 and M. Santa said the CIP budgeted \$100,000 and continued they have to have a number to work from.

Chairman James said these are budgeted numbers. He said a lot of communities will have a CIP committee and they talked about one here but since they do not have one it falls on the Planning Board. He said if you sum these projects up the total is so far beyond what they are going to raise it is not even close and he said what some towns or cities do is they will bond this money to do everything on this list so they bond say \$200,000 a year but the Town of Candia has not done this and they have not suggested to do this. B. Chivers asked if the Budget Committee looked at this as they are the ones approving the budgets in town. J. Lindsey said the CIP is a guideline not actual number so they would not have to micro managed it. Chairman James said the CIP has not specifically been sent to the Budget Committee. He said anything in here would have to be paid through a budget that they would have to be reviewed by the Budget Committee. He said that is why under funding it notes grants, warrant articles, etc.

D. Snow said on the second page of the CIP and he read, “ *A CIP is an advisory document that can serve a number of purposes, such as: Provide the Town of Candia with a guide to be used by the Budget Committee, Board of Selectmen, and the School Board for their annual budgeting process (RSA 674:5-8); Provide a forward looking planning tool for the purpose of contributing to the creation of a stable real property tax rate;*” He said no one, the BOS or Budget Committee, has looked at the CIP saying what are they supposed to be doing this year. He says no one pays attention to the CIP like they don't pay attention to the Master Plan. Say for example if the highway department gets behind by 3 years on what they put in

the CIP the town should look at this and decide either not do it or find some way to accomplish the work. He said the CIP is a tool to use to justify what is needed ahead of time. D. Snow said then the BOS, School Board and Budget Committee can sit down and figure out how can they maintain a stable tax rate and still manage to do the projects listed in the CIP. It is a tool to use to get where you want to go. D. Snow read under the CIP introduction page 2, *“Aid the Town’s elected officials, appointed committees, and department heads in the prioritization, coordination, and sequencing of various municipal and school improvements; to inform residents, business owners and developers of needed and planned improvements; and Provide a necessary legal basis for the development and proper administration of the Town’s impact fee system (RSA 674:21.V. (b)).”*

G. Clifford said she thinks it would be a good idea for the Budget Committee to see the CIP as it would be helpful to see what is coming. Chairman James said that is a good idea and assuming it is approved will send them a copy.

Chair James seeing no more discussion closed the Public Hearing on the Adoption of the updated Capital Improvement Plan update 2015-2020.

A. Hall **motioned** to adopt the updated Capital Improvement Plan 2015-2020. J. Lindsey **seconded. All were in favor. Motion passed (6-0-0)**. Chairman James passed around the adoption verification form for the Board to sign.

Other Business

Mylar Recording for Farm Stand 20 Main Street

S. Komisarek, owner of 20 Main Street and Jim Franklin LLC were present to discuss the issue of recording the Mylar for the Farm Stand 20 Main Street Major Site Plan. S. Komisarek said when his Mylar was sent to be recorded at the registry it was rejected as the registry requires that the plan be signed by a LLC. He said then he talked to Jim Franklin who sent himself and the town the standard of conduct for a LLC and highlighted under, *“Part Lan 501 Code of Ethics Lan 501.03 (m) The licensee shall not: 3. Affix the licensee’s signature and/or seal to any plans or document not prepared by the licensee or by an employee...”*.

S. Komisarek said he talked to his engineer who talked to two surveyors and said there is a problem and said some towns are not requiring the plans to be recorded now. He said Candia requires the Mylars to be recorded and the registry requires the Mylar to be signed by a LLC but the surveyor code of ethics is not allowing J. Franklin to sign a plan he did not prepare himself. He said now he is in the middle of this and not sure what to do. He said he heard a comment and not sure if there is any validity to it that the surveyor could actually put a disclaimer on the plan saying he is not signing anything other than the fact he did the actual metes and bounds.

J. Franklin felt the site regulations did not clearly state “shall record the plans”. He asked if the Site Plan regulations were adopted under the Subdivision or Zoning Regulations or if the authorization comes from the state where it gives the Planning Board the authorization to adopt Site Plan Regulations separate from Zoning and Subdivision. Chairman James said the Site Plan Regulations are their own separate documents which were adopted in 1989 by a vote at the town meeting. J. Franklin said site plan regulations 4.01, 4.02, 4.03d are the regulations they are having an issue with. He said 4.01 requires Mylars for recording, he said 4.02 requires a civil engineer to certify the site plan and 4.03d requires NH LLC to certify the boundaries and continued he didn’t find anywhere in the site plans regulations that say the site plans must or shall be recorded. Chairman James said 4.01 states copies must include Mylars for Registering at Rockingham County Registry of Deeds. J. Franklin said it doesn’t say the Planning Board shall require them to be recorded like the subdivision regulations states. He said it states the surveyor must certify the boundaries not the site plan which he did and his boundary survey is recorded at the registry.

B. Chivers asked if there was a subdivision on this property which would require a Mylar or is this simply a site plan and J. Franklin said it was just a site plan. B. Chivers asked if this was an essential document to the deed or title to the property. J. Franklin said he does not know what bearing the site plan would have on the deed or title if any or may have if the Planning Board were to have specific conditions

on the plan, conditions that may impact the financing or release of financing. He used an example of a property owner who could not get a release of the mortgage for a single building on the property to do a site plan on and was told to pay off the entire mortgage so therefore could not do the site plan. He said all he can address is the boundaries and what the law says he can and cannot do and he cannot put his stamp on a plan that was done by a company that he is not affiliated with. He said he did not prepare the plan and the law prevents him from signing and Planning Board says it thinks it should be recorded but nowhere in the Site Plan Regulations does it state shall be recorded.

B. Chivers asked if he is looking for a waiver from the Board and J. Franklin said he was not sure. He said why S. Komisarek should have to pay another surveyor to do it all over again. Chairman James said the registry is requiring the plan be signed by a surveyor and asked if anyone from the town had asked him to sign or seal this plan and J. Franklin said no that is not correct I was asked by the clerk to sign the plan so the town could record it and that is when I sent the information on code of ethics because he did not do the engineering and that is how they got here as he was not involved with the process so he cannot stamp the plan. Chairman James said he was right it doesn't say "shall record" but does say you have to provide a mylar and pay recording fees and does say you have to comply with not only the Site Plan Regulations but also comply with the Subdivision and Zoning regulations. He said it is implicit because why ask for the recording fee if the town was not going to record it. B. Chivers asked J. Franklin what the remedy would be here and J. Franklin said that is why he is asking if it is a Subdivision or Zoning issue because he would have to go for a variance if zoning or ask for a waiver if it is subdivision.

Chairman James said in order for the Mylar to be recorded S. Komisarek will have to hire a surveyor to recertify the boundary. S. Komisarek said if he hires someone else they will be bound by the same code of ethics. He said J. Franklin did not do the engineering only the boundaries which is recorded at the registry and crossed referenced to the deed. Chairman James asked J. Franklin if he were rehired to do the boundary survey could he then seal the plan with a note stating for purposes of boundary only. J. Franklin said the boundary is already certified. S. Komisarek said J. Franklin did not prepare the plan.

S. Komisarek said he talked to his engineer who talked to two surveyors and this isn't the first time it has come up and some towns have done away with recording site plans. He said he is just looking for a solution and also suggested by another engineer he spoke with and he said perhaps a disclaimer be put on the plan on just certifying the boundary only but he said it appears J. Franklin is not comfortable with putting a disclaimer.

J. Lindsey asked if this is something the town counsel could give legal advice on? Chairman James said he will inquire if they can give a waiver. J. Franklin said Scott fulfilled all the requirements without asking for a relaxation otherwise the Board would not have approved the plan. Chairman James thought it was sufficient if they referenced J. Franklin's registered boundary survey but after reading the RSA it is clear that you need a LLC signature and stamp. G. Clifford said she finds it hard to believe that his engineers didn't know that this was going to happen and asked why anyone preparing a site plan would not know it would be needed to be recorded. B. Chivers said it seems the only solution to this problem is to waive the recording requirement and fix the regulations to say, "shall be recorded" and in the future resolve this problem in advance. B. Chivers said but for tonight's problem a waiver is the most reasonable way to resolve this.

J. Franklin said he gets calls from engineers on a site plan where he will do the boundary and topographic survey and then it is given to the engineer and during the whole process it is a give and take process where he will check and make sure everything looks fine and when they are ready to submit the site plan he goes in and stamps the plan and then they submit it to begin the application process.

Chairman James said the suggestion of a waiver by B. Chivers is one solution and said he would entertain a motion.

A. Hall made a **motion** to grant a waiver to relax the recording of the Mylar for 20 Main Street Farm Stand in this case under Article 4.01. B. Chivers **seconded** for discussion. M. Santa said he doesn't see an emergency to take any action on this right now and would prefer to get an opinion from legal to

make sure they are doing the right thing as the Planning Board as they will set a precedent by doing this. J. Lindsey agreed and knows it is in limbo but would rather have town counsel review. Chairman James asked if A. Hall wanted to withdraw the original motion. A. Hall withdrew the motion and B. Chivers withdrew the second.

Chairman James said he will contact the town attorney. J. Franklin asked to see the request that will be sent to the town attorney and B. Chivers said probably not as it is privileged communication between the town and attorney but they will share the results with him. J. Franklin said all he is going by is past history and he knows sometimes the questions that got presented to the town counsel were not always what was talked about at the meeting and he said no offense here but he has a lot of history, probably as much history as Dick Snow working with the Planning Board going back to 1983 when applicants had to bring their own attorneys to the board and own recording devices because the Board would change their mind between meetings and not talk about the right things. He said the question is if he can as a LLC stamp a plan he did not prepare.

Chairman James said J. Franklin is here tonight because he did the original survey but he is not creating the problem it is the engineer who didn't know that they needed to do this and they didn't have the land surveyed themselves. J. Franklin said a survey is done first because the town's regulations ask for a stamped boundary which he provided; he did exactly what the site plan regulations said.

J. Franklin said if the Town Attorney says absolutely not you cannot waive this and it has to be recorded he has known S. Komisarek long enough he will stamp the plan and let it go and take his chances. M. Santa said they are not asking him to sign because it wouldn't be ethical because he would be stamping someone else's work and the law prohibits that.

S. Komisarek said this will be the same issue when he comes before the Board for another site plan for 36 High Street in another month or so. He said he had J. Franklin do the boundary survey. So now he has a survey and now he has hired Chad Brenan Fieldstone Consultants a different engineer then the one he used for the farm stand site plan. So now he is going to be in the same situation because he has already paid for a survey. J. Franklin said he did the boundary, topography and test pits and as soon as that engineer calls him to say they are working on the site plan saying to him can you come look at it, he can go down there see what the engineer is doing and make sure regarding the boundary nothing has changed and when it is time to submit the site plan he will certify and stamp it right on the site plan which is what he always does.

Chairman James said they are trying to get this straightened out and will get legal advice to make sure they are dealing with this correctly. S. Komisarek asked J. Franklin if he sees this as an issue for the upcoming project. J. Franklin said not as long as the engineer calls him up but he has sent the engineer the boundary survey and he has yet to hear from the engineer which is the same thing that happened with the Farm Stand. No one contacted him and asked him what does he think and did they make a mistake did they put the wrong bearing in distance etc. S. Komisarek said so you are saying as long as you have some dialog with the engineer and are involved in the process you do not have a problem stamping the plan and J. Franklin said correct. S. Komisarek said he feels they are getting to the heart of the matter. J. Franklin said he does not charge people for drafting his work. Chairman James said he will contact the town attorney. S. Komisarek thanked the Board for their time.

Sign Mylars for 606 North Road & 81 Halls Mill Road Lot Line Adjustment

The Board signed the Mylars then they will be recorded.

Elections March 10, 2015

Chairman James said he is pleased to see J. Lindsey is running again. He said unfortunately and he understands and said they are going to miss G. Clifford as she is not running. He said he appreciates all her support and help time and hopes to see her when they work on the Master Plan update. J. Lindsey said Tom Giffen is running for the Planning Board as a write in. She said he was a former selectmen and A. Hall said he is also the treasurer of the Trustee of the Trust Funds and a CPA.

Chairman James said there is a ZRRC meeting following if anyone is interested. The ZRRC meeting was cancelled due to lack of participating members. Next ZRRC meeting is scheduled for March 18, 2015.

A. Hall **motioned** to cancel the March 4, 2015 meeting due to lack of applications. J. Lindsey **seconded. All were in favor. Motioned carried (6-0-0)**

The next scheduled Planning Board meeting is March 18, 2015 at 7pm at the Town Hall.

A. Hall **motioned** to adjourn at 8:15 pm. J. Lindsey **seconded. All were in favor. (6-0-0)**

Respectfully submitted,
Sharon Robichaud Land Use Secretary