

CANDIA PLANNING BOARD
MINUTES of September 2, 2015
UNAPPROVED
Public Hearing

Present: Sean James Chairman; Albert Hall III, Vice Chairman; Tom Giffen; Scott Komisarek BOS Rep; Ken Kustra; M. Santa; M. Laliberte Alt; Carleton Robie, BOS; Dennis Lewis, Road Agent; Boyd Chivers, BOS

Absent:

Chair James called the meeting to order at 7:00 pm immediately followed by the Pledge of Allegiance. He asked M. Laliberte to sit for M. Santa.

Minutes August 5, 2015

A. Hall **motioned** to accept the minutes of August 5, 2015 as amended. J. Lindsey **seconded**. T. Giffen, S. James, K. Kustra, S. Komisarek, A. Hall and J. Lindsey were in favor. M. Santa abstained. **Motion passed (6-0-1)**.

Other Business

Discuss bond renewal for Candia Crossing

S. Komisarek recused himself. Chairman James asked B. Chivers if he wished to talk about this as he had asked this to be put on the agenda. C. Robie, BOS Chairman said that he would talk about this. He said the BOS was made aware on August 10, 2015 that the bond was to expire on August 12, 2015 He said B. Chivers asked him to put this on the agenda for the BOS meeting that night Monday August 10, 2015. He said the BOS discussed the bond renewal and it was agreed they would give a grace period to get the wording correct and to put the bond in place so the letter of credit would be acceptable and secure. He said it took 22 days but now they have an acceptable bond. He continued that the Board was also made aware that the conditional use for Candia Crossing project is to expire on December 12, 2015 which is something the Board will have to address at the next BOS meeting.

S. Komisarek said the BOS had some concerns which were all about site stability in making sure none of the runoff collected any sediment and ended up down in the pond or anything of that nature. He said they addressed all of those things. He said when he goes back there he sees everything keeps growing in and you cannot see or pass on the access road anymore and it is an incredibly stable site. He continued saying they kept extending the project as the market has been terrible since 2007 and he hopes it comes back and now in 2015 the market is starting to come back but they don't have or are in a position and nothing is going to happen with the project this year.

K. Kustra said there is a sign there saying it is a 43 acre subdivision and asked if it has been subdivided. S. Komisarek said no and it is not a traditional subdivision. He said together with J. Cole the approved project was put on the market in the summer to gauge interest. He said in 2006 the project was designed with spur roads which hurts the project and not being able to offer a second level loft which was denied by the Planning Board also hurts the project. And now talking with developers about the project the road length and spurs and not being able to provide a loft it is just not going to work. He said he has had some discussions with Chairman James and ultimately the project will need to be redone because when he talked about the changes he wanted to make to the project, there were too many changes and they would need to come in with a new plan. He said not quite two years ago they came before the board for an extension of the Conditional Use Permit and the Board asked him how long they would need and they asked for two years and now it is almost two years again.

K. Kustra asked with the market improving and your expectations how does that fit in with SNHPC expectations? A. Hall asked why would SNHPC get involved and how did the subject come about? K. Kustra said they are trying to revitalize Candia and he said he feels personally the more people you can get into town you are going to have more that you are going to need and if that happens you are going to grow. A. Hall said in his opinion as a SNHPC representative this is only going to help the overall plan and the town. K. Kustra said that is exactly what he was getting at. Chairman James said he doesn't see how SNHPC would necessary get involved in this project. Chairman James said as far as the discussion tonight it was just an update on where the bond stood and that that was explained by C. Robie. Chairman James said they have nothing to do on the project right now.

B. Chivers asked what the board sees as a practical effect of having a letter of credit on a project that has a conditional improvement that is set to expire at the end of this year. He asked would the conditional approval trigger default at which time the letter of credit would be used to reclaim. He said he doesn't understand how all of this is going to work. Chairman James said they would have to have some discussions between the PB and BOS as to what needs to happen. He said once the initial approval lapses they would need to define terms of what has to be done and

when. He said it would involve the town engineer and Dennis for sure and Planning Board and Select Board to decide what is appropriate. T. Giffen said correct him if he is wrong but he gets the sense the project is something viable if not to build it themselves but to give it some marketability and it makes sense to him for them to keep an active approved plan of some sort in place whatever it will be. He said that is the sense he gets as an observer. He said if he were in their shoes he would just keep the project alive to keep their options open as the market becomes good enough to make it viable and he doesn't see any issues with that personally. Chairman James said that is an option but time wise they would not have enough time to get a new plan in place before the deadline so they have to look and deal with the deadline in some manner. S. Komisarek said based on the feedback they received from the realtor and developers, they need to work on a new conceptual plan.

S. Komisarek said the thing he keeps coming back to is two years ago it was suggested if the conditional were to expire would they need to reclaim the site and the amount of the bond. To him they have this infrastructure that is already bought and paid for which was a tremendous investment and at some point the access road is going to be used so the whole notion that they need to loam it and seed it and take \$51,000 dollars of John's and Scott's money to do that, what purpose would that serve. He said John and himself have walked the property and constantly have monitored the property and it is an incredibly stable site. He said they have talked to their attorney and the bond is about public health, safety and welfare. He said they have a very stable site and one thing that was mentioned to him was the esthetic component and he talked to his attorney about that which comes under welfare. He said he just drove by the site he sees the trees the gravel road going out. He said not once have they received a comment that it was an eyesore. He said their argument is they do not understand the basis of reclaiming if you have infrastructure in place. He said they would only sell this to a developer. He said they have a tremendous investment so to take \$51,000 and think that somehow they are serving justice to the community at large, he has a really hard time to see where the logic is. He says he just does not understand that logic with the idea that the best thing to do is to take that money because they can and use it to restore it because they can and two years later they would have to go in and produce more carbons into the atmosphere to scrape the loam off to start the road. That is what he is having trouble with and is something he would like to see discussed.

Chairman James said absolutely that is something he was talking about that would be something that would come down the line. He said the counter to it is from talking to people is you have talked about doing something and talked about doing something in a certain time frame that may or may not happen and the town's role is to protect the town's interest and potentially the land could get sold and someone has no intention of putting the road there or any place else and then you are just left with the road there for twenty or thirty years. And the town loses once the bond expires and that is the point. He said the Board has been sympathetic and they have extended the conditional use and it has been 8 years and he understands the economy. He said his counter argument is whether to loam and seed it or remove or whatever it is a discussion for a different day. He said he was right that they do have to have that discussion. He said and part of tonight's discussion is to get the Board thinking about that.

J. Cole said you are aware they were granted the right to build an access road to the back of the property. Chairman James said he doesn't think he was granted the right to build the road. J. Cole said it is an access road only. Chairman James said it is an access road not a full box road with structures. J. Cole said they were given the right to build access road and that is all it is. Chairman James said yes and that will have to be discussed.

S. Komisarek said what he wanted to add is just from a pure standpoint of logic and the amount of investment they have into this project they aren't just going to sell to just anyone that isn't their intentions. He said so the idea they would sell it to someone that is going to let it sit there for thirty years is just not practical and not going to happen. He said at the end of the day when you look around the town and you look for esthetics you don't have to go very far from here. He said if you drive by the project and be objective and just look at it and say does this site really look bad, which it doesn't and there is no erosion then at the end of the day what are we trying to protect? The site has great esthetics and great stability. He said he drives by twice a day and it looks good and has grown in nicely and has become a nice wildlife habitat. He said at this point and from a logic standpoint what do we achieve if you have a stable site that looks good other then achieve using their money. Chairman James said he understood and again for tonight the purpose was to talk about the bond and the update and that has been take care of.

Master Plan update: Steering Committee Update

Chairman James said a copy of a draft press release and public notice was put in everyone's folder. He said M. Laliberte has put the notices together for the Steering Committee. M. Laliberte said his understanding is they are getting close to the 6 month period to get the Steering Committee organized and have the profile meeting which will be after the town meeting in March 2016. He said reading the minutes and the UNH Coop website, they suggest 6 to 9 months period to do this. He said the good news is that there are enough good experienced people around to do this

in 6 months but they are getting close to the 6 month mark. He said there are some minor grammatical errors on the draft press release and public hearing notice but the point of this is to have everyone look at this to see if this is the right direction for the press release and if everyone thinks this is the right way to promote help getting people on the Steering Committee and if the Board and is all good tonight he can make changes the Board recommends and he can contact Alyssa over at Candia Auburn Post to see if they can get a story in the next week or two and preferably a cover story and also sent it to the Hippo, forum and the UL. He said he also put in a tentative date for the profile meeting as he didn't know if there was a date selected yet.

Chairman James said the date is still being discussed but that is the general time frame. M. Laliberte said he used the dates as a bench mark for the 6 month period. S. Komisarek said he thought they had come up with either the first or second weekend in April. M. Laliberte said his concern is, that the Steering Committee is still in a morphus blob right at the moment and they need to get people on the committee and set some time lines to actually get this off the ground. K. Kustra said the third paragraph from his this point should be emphasized and next paragraph where it says market the profile event to mention there will be facilitators. The Board liked the write ups. M. Laliberte said it is a first draft and he will clean it up and if everyone is okay with it, he will send it out tomorrow and then follow up with phone call to the papers. M. Laliberte said he could try and make links to fill out but in the end he feels people responding should go to the Land Use Office until there is a chairman of the Steering Committee.

Chairman James said the write ups were great just hold off as he needs to get in touch with Molly at UNH to find out the meeting date in September. He said he did talk to Nicole Laflamme on the school board about volunteers and she said the school board has a lot on their hands with Pinkerton. He said she had some other ideas of other people to reach out to, so he said he will get in touch with her and see. He said the next step is to pick a date and get all the names to Molly at UNH. M. Laliberte said he will hold off on this until next week and will clean the drafts up and leave the dates open until he gets them. A. Hall said he has heard that Sue Young BOS has volunteered. S. Komisarek said he had spoken to Jim Argerio and he is will do it. T. Giffen said he has reached out to someone he thought would be a good fit but they do not want to be on the committee. S. Komisarek said they need to reach out to someone in the business community as well and suggested perhaps they reach out to the owners at the Irving as they are a thriving business in town and noted business owners do not need to be residents per Molly at UNH. C. Robie suggested Joe Sobal at the Irving may be interested. He said he may be interested, he is smart and well rounded person and being at exit 3 they have a view of people and they are fulfilling quite a need for the local people. He said Betty Sabean on Jane Drive was interested. S. Komisarek said he would call the owner at Exit 3. Chairman James said if he is interested to get his info and forward it to the Land Use Office. Once all the names and information is collected it will be sent to Molly at UNH. He said it is exciting as they are moving forward.

Public Hearing NH Electric Coop Scenic Road Tree Removal (Crowley Rd) September 16, 2015

Chairman James said a public hearing is coming up for tree removal on a Crowley road which is a scenic road. He said he has a public notice and they are looking to remove 9 trees which Electric Coop say are all dead. He said the trees are all marked with green & black tape. He said he encourages the Board to go look at them, the public notice will be emailed to the Board with the information. D. Lewis said it was the first he had heard of it when he saw the agenda. Chairman James said that was the issue they ran into at the last hearing is the Board members had not viewed the trees that were going to be removed. B. Chivers said he took a ride down Crowley Road and he didn't see any flagging on the trees. The trees were marked with green and black stripped tape and Electric Coop said you have to look for them as they do not stand out. Chairman James said the trees marked range from 8" to 25".

D. Lewis said he remembers at the last hearing the Board did not view the marked trees and normally the trees are marked ahead of time and the Board will view the marked trees before the hearing. He said the last hearing did not go well but at least this time the trees will be marked and hopefully everyone will have a chance to look at them. He said the trees are dead which doesn't really doesn't matter as much not like the last hearing where there were a lot of large trees most of them alive. He said he thought it would have been better if everyone had physically seen what was marked because after the hearing he had a couple of residents call him and they didn't want Eversource to cut their trees. These residents didn't like how the hearing went and it seems like they were given permission to go in and do whatever they felt like doing and no individuality of what was marked. He said at least one or two definitely backed out from having their trees cut in front of their house. C. Robie said he was present and there were numerous people that questioned cutting those big oaks and he thought the consensus was that they were going to go back and look at those oaks. He said those oak trees were not going to fall over until they die you might lose a limb but those big oaks were not going to fall and were old and now they are gone. He said he agrees with D. Lewis but not picking a side but he felt something went ajar there. D. Lewis said a couple of responses he received after the hearing from residents was Asplundh Tree Co. and Eversource were saying the Planning Board gave them

permission to cut anything. He said they left here and were home free it was like C. Robie said they got permission to cut the big oaks and the residents were not sure afterward whether they still had a say on the trees that were marked in front of their house and that is where the problem came in. He said Asplundh would tell the landowners they had permission then the landowners would call him and he told them it is still their tree and if you do not want them cut then they will not be cut. A. Hall said subsequent to that meeting Eversource obtained written permission from the land owners. D. Lewis felt that from now on every scenic tree public hearing that everyone should view the trees marked to make sure everyone knows what is going on Planning Board, BOS, himself and the land owners. M. Santa said for the hearing coming up next week Electric Coop has tagged the trees and asked if they have brought permission paperwork from the landowners. The permission slips were not given to the Board. It was asked to get permission slips from the land owners before the public hearing. T. Giffen said his impression of the last public hearing is they had to produce written permission but there were conflicting stories coming from Eversource and he didn't trust them and the thought he had was to set up a procedure and unless written permission is obtained from the land owner that tree was not cut down. He agrees there should be a controlled procedure to stop confusion. Chairman James said all the time he has been on the Board there was only one other scenic road hearing and he was not at the last one. He agrees with D. Lewis that the Board members should go out and view trees that are marked and if not marked or cannot find them to contact the Land Use Office. He said he also agrees with M. Santa that permission letters are also needed. M. Santa said going forward they should actually set up a written procedure. T. Giffen said he would like to see the procedure include an authorization letter from each land owner to cut every specific tree. C. Robie said sometimes they do have to maintain the line and a tree becomes a hazard to maintain the line and if the tree comes down it could also become a hazard to the land owner. D. Lewis said he sees the problem that happens when they go and cut everything in the path. He said the BOS can give permission to take down a dead tree without a scenic road hearing. He said where the problem came in is they were cutting so many trees without any rhyme or reason to it. D. Lewis said the big oak trees could live for a 100 and then die and still stand there for another 10 years after they die before they would not fall down. He said people left the hearing not getting a good explanation and that is why they wanted to change their minds after agreeing to it. C. Robie said when he left he thought they were going to leave the large live oak trees. K. Kustra asked D. Lewis if he has seen Eversource with Asplundh and D. Lewis replied yes not with them every minute but on a daily basis. K. Kustra said he could see Eversource saying what they want cut and Asplundh goes wild. C. Robie said they would cut only what they are told.

B. Chivers asked who has the final authority, does it rest with the Planning Board or the individual landowners because the scenic road statute is enacted by the entire town. He said he thinks if the entire town chose to designate Adams Road as a scenic road then the town authority granting permission to work on it, rests with the planning board and have the final authority of which trees get cut. He said you could have a scenic road with two land owners one on each side and they could grant permission to cut every tree down and overrule the town's designation of that road as a scenic road. D. Lewis said it is the other way around. He said the land owner owns to the center of the road and the town has an easement over the road so the dirt is theirs, the stonewall is theirs and the trees are theirs and the town cannot tell them what to do with their trees so even though it is a scenic road if they choose to cut trees down they can. He said that is the way the law is written. He said the scenic road designation by the town is designed to protect the land owner from the town road agent or Eversource from coming in without their permission and cutting down the same tree that either they want or do not want and that is the only reason they have scenic roads because towns could go in and wipe out shade trees in front of someone's house or widen the road. Scenic road designation gives the land owners some back bone to be able to say no I do not want the trees cut down. B. Chivers said so in the end the way Adams Road played out is the right way to unfold.

Chairman James said yes and again said he was not at the hearing but it seems like the two parts that should have happened did not happen. He said first there wasn't a site walk so the board would have known what trees they were talking about so they could visualize the change it would make and second the permission letters. C. Robie said at the meeting there was a land owner on the opposite side of the road that wanted to voice their opinion on the oak tree cutting but the land owner had signed off on cutting the oak trees. D. Lewis said people left with not having a clear distinction of what they could do and what they could give permission for or not give permission for and what Eversource was going to have the right to. There was no clear explanation. C. Robie said he was not sure what right Eversource has for safety for their crew and their equipment but if a judge says a tree needs to be removed because it poses a hazard it is removed. He said he remembers when a tree came down and took out 7 poles. D. Lewis said the purpose of the hearing is so that a resident who may not want that tree cut but Eversource, the town who ever can present their case of what would happen if they do not remove the tree or there could be a compromise, trimming,

take it down or plant a tree further back. He said so everyone can hear the logic behind why they want to remove the tree which wasn't the case at the last hearing.

M. Laliberte said he had the same issue as T. Giffen on how Eversource was obtaining permission by sending post cards and if they did not get the card back they would knock on doors which they were doing during the day when most people are not home so when they had the meeting they were saying they received permission from everyone and then the first two people stood up saying they did not give permission one on Adams Road and one on Donovan Road. He said Eversource needs to get these permissions in hand to the Land Use Office before they start or do anything and the impression he got from the meeting was that Eversource was going to have that taken care of and it sounds like they did from what he is hearing. It was confirmed all permission letters were given to the Land Use Office. C. Robie said there wasn't a letter of consent from the land owners on the opposite side of the road as permission was not needed. He said they did not like the idea of the trees being cut but they had a say in it at the public hearing to maybe convince the land owners. T. Giffen said there was at least one landowner that was not contacted. A. Hall said T. Severino was speaking for Rick Johnson his neighbor across the road, who had trees tagged. M. Laliberte said that Eversource did acknowledge that they did not do an adequate job of reaching out and getting all the permission letters from the tree owners and at the end of the hearing said they would address it.

Chairman James asked the board to take a look and read the public notice and take a drive down Crowley Road.

NH RSA 676:4-b, I Amendment Effective August 8, 2015

Chairman James said they received an interesting letter from Meridian Land Services, making them aware of the amendment to RSA 676:4-b, I, which became effective August 8, 2015. He said this legislation that recently passed allows the planning board applicant to request that a third party consultant be used to review their application materials. He said he is familiar with Meridian as they do a lot of this type of work and they want to offer their review and consulting services in advance of such requests, so that they may be deemed a qualified firm for consideration. He said he was not sure if the Board wanted to get into this or not. He said the idea would be if an applicant came in and they don't care for Stantec and they want xyz surveyor to do the review instead. He said he has some concerns. T. Giffen said then someone can bring in their own hired firm. Chairman James read into record the bolded added new part of RSA: 4-b, I, "*The applicant may request the planning board choose a different third party consultant and the request may include the name of a preferred consultant. The planning board shall exercise reasonable discretion to determine whether the request is warranted. When such a request is granted by the planning board, the 65-day period for the board's action on an application stated in RSA 676:4,I(c)(1) shall be extended 45 days to provide the board adequate time to identify a different consultant.*" Chairman James said it sounds like the applicant could come in and say they do not like Stantec and they want abc and the board says not them but how about someone else, which puts the board in a predicament of having to come up with another contract with another firm. C. Robie said it is state law and you may not want to deal with it but it is the law and if someone wants another firm. Chairman James said he just read this tonight and he hasn't had much time to think about it and wanted the board to be aware of it. He read, "*the planning board shall exercise reasonable discretion to determine whether the request is warranted*". He said the question becomes what is reasonable discretion. C. Robie said if the person was denied reasonable discretion and his consultant was as qualified as the town consultant that would not be reasonable discretion as they have the same capabilities. Chairman James said Stantec is a firm of 20,000 people and have really qualified local people. C. Robie said there are numerous other engineers that may not that large that haven't sold out to Stantec yet. Chairman James said that is true. C. Robie said he would like to keep his business local rather than with a worldwide company. M. Laliberte said maybe a developer that comes to Candia may have had an issue with Stantec in another community and feel uncomfortable working with them.

Chairman James said he just wants the board to be aware that if an applicant comes in and they say they do not want to work with Stantec with good reason then who would the board have for a third part and should the board have a list of 3 or 4 engineers. He said what Meridian is suggesting is if the town makes a list and they are giving their qualifications to be on the list. C. Robie said the board can deem them qualified. S. Komisarek said personally he feels the heart of this is competition. Monopolies are not good for the consumer so if you think of Stantec they have a monopoly so whatever they say the applicant has to pay there is no competition and we all know this has been an incredibly lucrative business for Stantec. Chairman James said he would have to disagree with that. S. Komisarek said to have 20,000 employees that have had to make a few bucks along the way. He said Stantec has had lawsuits where they have lost where they had people on the job that where sitting in a car and billing out. He said he has heard lately quote, "*they are a billing machine.*" He said they have no liability they will charge you up to much as you pay your engineer \$80,000 then the next thing you know you are paying Stantec and you are up another \$80,000 with no

liability and they do not have to compete with anyone. He said if you ask him that is a pretty good business for someone as they have no competition. He said his personal view and the heart of this is the fact they need competition. T. Giffen interesting point. He said the competition scenario and the local business scenario both have a lot of things in favor He said it places the planning board in an awkward position if the board is making recommendation. He said he would rather have the applicant choose an engineer and the town will qualify them as they have an extra 45 days it's the law and they have to comply. He said he doesn't see anything in the law where the town has to recommend anyone. He said he feels the board should not be in a position to recommend which would put the town in a position for people to come back on the town say you recommended these people and they did not work out. He said but if they have a preapproved list it might make it easier for someone who doesn't know who to go with. M. Santa it wouldn't be about recommending or pre-approving an engineer that might be used by an applicant. He said it is a new law and they need to figure out a way like any new law how to deal with it. A. Hall suggested sharing the information they just received from Meridian by sending it around to the board and to review Stantec from a business point of view and to continue this discussion at a subsequent meeting. Chairman James asked to have Meridian's info scanned and sent to the board. D. Lewis said they originally went with Stantec because they do not do any private work. He said they have run into situations where other engineers would work privately for a developer in another town and this developer would come to town, as where Stantec has a lot of resources so you didn't keep farming up different facets of the job to other companies and that is why Candia chose them as there would be no conflicts with private developments going on anywhere else. He said he doesn't think they have made a lot of money off Candia throughout the years and they have been fair with Candia. He said all engineers are expensive as far as he is concerned. Chairman James said he wants to be prepared if an applicant comes in.

Planning Board Budget

Chairman James said the budget was submitted and said is the same as last year with the exception they added a line item for SNHPC dues which were talked about and it made sense since they work the most with them and the invoice always comes to the planning board first. He said there is a meeting on the September 19, 2015 to talk about the budget. C. Robie asked if he put anything in for the Master Plan funding. Chairman James said it was not put in the budget. He said the BOS put a warrant article in this year that passed to start the Master Plan phase one and the idea was to do the planning and then figure out what they need to do for phase 2. He said phase 1 is the meetings and getting input from the town with phase 2 being implementation. He said now with the profile meeting event being after the town meeting next year they will not know the amount they may need. He said they can certainly ask for money ahead of time. C. Robie said after the event you are going to need a planner to put everything together. Chairman James said they don not have a cost estimate to do this. C. Robie said he did not know if there any grants through SNHPC and how much they will do for Candia with the dues that they pay. Chairman James said SNHPC is onboard with helping Candia on this. C. Robie said the town overwhelming voted for the \$5,000 on the warrant article and another warrant article may be needed to finish so they will need to start to get the warrant article in for 2016. He said he understands if they change a little bit or not at all but the town has to do something to plan for the future. S. Komisarek said could it be a line item in the budget not a warrant article. C. Robie said if it was a line item in the budget then somehow it could be voted not to use it but if it is in a warrant article the money is specifically for the Master Plan. He suggested they talk with SNHPC asking them if they would help once the profile event is over by saying they could increase the budget by what they would need to do this. He said it would be easier to get into the budget and be able to show why the increase to the budget committee and asked if they could get an estimate. S. Komisarek said the cost would depend after the event if everything remains the same there would not be that much work but if there are a lot of changes would be more. C. Robie said there will be a budget meeting with the BOS on Saturday September 19, 2015 at 8:30am if anyone is interested.

Merrimack Valley Paint Ball Major Site Plan Mylar Signing

The Board signed the Mylars and the Mylars will be brought to the registry on Friday.

Chairman James said the next meeting is September 16, 2015. There will be a public Hearing. Electric Coop is coming in for a Scenic Road Tree trimming and removal on Crowley Road

A. Hall **motioned** to adjourn at 8:15 pm. T. Giffen **seconded**. **All were in favor. Motion passed (7-0-0).**

Respectfully submitted,
Sharon Robichaud Land Use Secretary