

CANDIA PLANNING BOARD
MINUTES of October 4, 2017
APPROVED
Public Hearing

Present: Tom Giffen, Chair; Al Hall III, Vice Chair; Judi Lindsey; Rudy Cartier; Ken Kustra; Carleton Robie, BOS Representative.
Dennis Lewis, Road Agent

Residents Present: Dick Snow

Absent: Joyce Bedard; Mike Santa, Alt

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

Minutes September 6th, 2017:

A. Hall made a **motion** to accept the minutes of September 6th, 2017 as presented. R. Cartier **seconded**. C. Robie; J. Lindsey; T. Giffen; **were in favor**. K. Kustra **abstained**. **Motion passed (5-0-1)**.

Continuation of 17-010 Minor Subdivision Application: Applicant: Steven Tremblay; 9 North Road, Candia, NH 03034; Owner: William Tremblay, 293 Chester Turnpike, Candia, NH 03034; Property location: 293 Chester Turnpike, Candia, NH 03034; Map 411 Lot 051 Intent: To create one new residential lot.

Present: Applicant Steven Tremblay; Heather Tremblay; and Jim Franklin, surveyor.

Abutters Present: None

S. Tremblay introduced himself; I'm Steve Tremblay, my wife, Heather Tremblay. Jim Franklin's here, he was the surveyor of record. Since we last met we've hired a real estate attorney to look at the restrictions and she found that there were five houses. In there it mentioned the majority of the current owners need to sign so I have a copy of that for you to submit. We don't yet have all the signatures, we have them verbal. We have the verbal from the neighbors that they'll agree to let us subdivide the land but tonight we had one of the folks ready to sign but we didn't have a notary present. We'll cross that.

T. Giffen said it sounds like you're making progress in the general direction but you just have to dot the i's and cross the t's and get things buttoned up. S. Tremblay replied correct, we think we can get that done by the weekend.

T. Giffen said your land use attorney's going to take care of any recording that's necessary to release this. S. Tremblay replied I have a question about that. She mentioned not to change any of the margins in that paperwork because it needs to be submitted to the state and I'm guessing that's what she does, but I don't know if there's anything I need to do for the Planning Board. T. Giffen replied as far as the Planning Board goes, we're effectively disinterested third parties. We're not really directly involved in anything to do with it; this is a private matter between one land owner and the other land owners that are part of this group. From our attorney, I'll read this all out so it's all in the public record. Andrea had made the inquiry and one of the attorney's at Upton and Hatfield, Michael Courtney had replied: *Andrea, I have seen planning board's handle disputes as to land ownership in several different ways. As a general rule, planning boards do not have the authority to decide land disputes. A civil action to quiet title is the proper venue for deciding the rights of landowners. The planning board does not have jurisdiction to decide if a certain deed restriction prevents subdivision. Here, the abutter has presented an issue as to whether the land may be subdivided and the board should not put itself in a position of deciding this question. I would*

either allow the application to be held in abeyance until there is an agreement by the property owners or a court order settling the dispute, or deny the application because the applicant has failed to show that his land is clear of this title issue. I would caution against granting the application with a condition that the title question be resolved in the future. Doing so may result in more confusion over this issue. T. Giffen continued we're following the attorney's advice; that's where we stand. We haven't discussed this as a Board yet. The question to the Board on this matter would be whether we simply continue it until such time as its resolved, if that appears to be realistic or whether we deny it because you've failed to show that it's clear of the title issue, restriction, covenants, whatever; that's where the Board stands right now. It sounds like you're making progress, you have a competent attorney. The only difficulties that could arise is yes you have the majority but what if one of the people who is in the minority has a strong enough opinion on this subject and personal feelings and money to throw at it and hire their own land use attorney to fight it, right or wrong. It could tie things up. Be prepared for the worst, hope for the best, would be what I would do if I were in your shoes. S. Tremblay commented I appreciate you bringing that to our attention. Our attorney made no mention of that at all. T. Giffen replied we don't have the authority as a Board to decide it so we can basically deny it because there's a cloud on the title or we can hold it in abeyance, in other words, continue it if it's sensible to do so. It sounds like to me, it's sensible to do so but I'd get the flavor of the Board on that.

A. Hall asked would a continuance cause a problem for you. S. Tremblay replied the continuance won't and not to muddy the waters but the last time we were here, because we're crossing over that wetland a little bit, Tobin the engineer thought that we would be able to apply for; by notification I guess. They said it's a 75 day review period so that clock has started. We're waiting to hear back from Fish and Game to make sure there's no endangered species or wildlife, plants out there. T. Giffen said so there are a couple of things in the pipeline that still have to come through. S. Tremblay continued would I love for it to be resolved today, it would be great because we could get the hole dug before the frost hits but a continuance would be the second best option.

A. Hall asked do you know how long to clear things up.

H. Tremblay replied from our standpoint the lawyer just said, which it states clearly in the covenant, that we need majority vote to break all or part of the covenant. So as long as we get two of the neighbors plus ourselves for three out of five and notarized and submitted, it should be broken for us to...it's stated in that document for us to subdivide our land into two pieces and build one house. It should be resolved as soon as we get two notarized signatures and submit it to the state. S. Tremblay added we've elected to just break our land, not the whole entire covenant. So the rest of the covenant is still intact for everyone else in the tract. We figured that would be easier. We're under the impression it should be pretty quick, by the weekend or by next week.

T. Giffen said so it sounds like from a practical standpoint continuance would not be a problem for anyone involved. S. Tremblay said I don't believe so. R. Cartier asked do you think you could have all of this done in two weeks and have it recorded. S. Tremblay replied I'm not familiar with the recording process but I'm certain that I can have the signatures and the notary done on there by two weeks and submitted to my attorney. From there I don't know the process. R. Cartier responded I was just thinking of the time frame. We do have another meeting in two weeks.

C. Robie commented he's going to need a wetlands permit.

T. Giffen said it may make sense to continue this to one month out (*Nov. 1, 2017*) and hope that it's okay and if not, if the necessary items haven't been cleared by that time, we could continue it again. Based on the attorney's advice do we continue or deny because the title has a cloud over it.

R. Cartier made a motion to continue it to the November meeting. A. Hall seconded.

C. Robie said I have a question on the covenant. You said you were going to change the covenant only in part. H. Tremblay agreed, yes. C. Robie continued meaning only your lot. S. Tremblay replied I believe that's the verbiage she used, yes. C. Robie asked was there a reason for that? S. Tremblay said I wanted to be fair, one of the abutter's, although technically she's not an abutter because there is a

right of way between there, she doesn't want mass development out there. Given the amount of land behind our house that's inaccessible currently, I figured it would be best to say we're just going to do one lot, so that the other four tracts of land don't have free reign to start building. C. Robie said so does your vote count the next time someone comes to you and your father correct? H. Tremblay agreed. S. Tremblay replied we would still be in that tract. C. Robie replied and your vote would count to say no to somebody that wanted to subdivide? S. Tremblay said I think we would take it case by case to see what they want to do. C. Robie replied to me that's a slippery slope. That's just my personal opinion. *Plus (unintelligible)* the majority gets bigger the more times; there are five people now that get a chance to vote and now there'll be six. S. Tremblay said I'm not familiar with the legal aspect of that. C. Robie replied I'm just saying what that brings. I guess it's none of the Planning Board's business at this time but someone else comes in a few years from now, 2 houses down from you and you're the deciding factor that says no, that would make me feel a little funny sitting on the Planning Board, saying gee, that's all I've got to say.

A. Hall asked who was the lady that had an issue; the one who was here last time. H. Tremblay responded Tatulis, the neighbor to our left. S. Tremblay commented there are five houses, this would be her house here, there's the right of way, this is our house and then there are three other parcels this way that are all on that tract. A. Hall and she knew we were going to be here tonight. T. Giffen said there's no notice required. S. Tremblay said she was here last time and she had a certified letter last time and that's when it came to light that this covenant existed. Because if you remember, our deed referenced no such thing, it referenced a place in Hampton and it was the feeling of the Board that it was a typo, that the other four land owner's had the correct page. We hired the real estate attorney, got her opinion on what we should do, how we should move forward and she said this letter that would be submitted to the state would break the covenant for our land and the other land owners. Should they want to do something in the future they would have to hire their attorney to draw up their paperwork. So that's what I did.

R. Cartier said Carleton that was an interesting question and there's only one other lot that could possibly be subdivided under our current regulations and that would be lot 24-1, all the other lots are less than 400 feet of frontage or less than 3 acres of land. S. Tremblay replied they just bought their house; the Ashness's very nice people. They have a circular driveway so I'm not sure how they would get the frontage there.

K. Kustra commented the motion was for continuance. The recommendation from Courtney is abeyance. That's a condition no matter which way you look at it. I'm against it. T. Giffen said we have a choice of denying or doing something else. To me abeyance, I think of putting something aside, not acting to hold in abeyance. That sounds like the same basic meaning as continuance but I'm not an attorney. K. Kustra continued but it involves a condition. T. Giffen replied not really. K. Kustra replied what are you holding in abeyance. T. Giffen, R. Cartier and C. Robie all responded the application. R. Cartier said we're not accepting it yet. T. Giffen confirmed we're not going to accept or approve anything at this time. We're just going to put the whole matter aside. A. Hall replied I understand it that we just continue it to give the applicant the opportunity to clear this up. C. Robie said more time. K. Kustra said that can be done the other way to if we deny it. T. Giffen replied but then they'd have to start over from scratch, its more paperwork. A. Hall commented and more costly to the applicant. T. Giffen responded based upon the input something's fairly close to happening otherwise I'd be with you; I'd rather deny and re-open if it was going to be a year or two in the courts. A. Hall replied they summarized it a month ago. They presented the issues and the abutter presented this issue and over the past 30 days, you the applicants have tried to do your due diligence to the best of your ability and you're at a point now where it's going to take just a few more days to get the notarized copies. S. Tremblay replied correct. K. Kustra said I'm referring to number 12 (*protective covenant*) where it says here *automatically extended for successive periods of ten (10) years unless, by a vote of the majority*. Now what happens if someone dies next week? T. Giffen replied last by a vote of majority. C. Robie replied of the then owner's; that's today. K. Kustra said that's right. You said you had three out of five, how many total are there. H. Tremblay replied there's five so three out of five would be the majority. K. Kustra said and they're willing to sign off on it now. H. Tremblay agreed. S.

Tremblay replied we have two already. The current landowner, William Tremblay, and the neighbor, Demicco and the Ashness's who we met the other day. K. Kustra replied so if they sign off the next step is what, court? S. Tremblay said I don't think there is any court involved. K. Kustra commented well we don't approve. T. Giffen commented we're not in a position to decide any dispute. It has to go to a land; it has to be a civil action to quiet the title based on what our attorney says and that appears to be what their taking, civil action to quiet the title. Basically, right now today, we're in the same position we were last time. We have an unresolved issue. Last time we granted a continuance because the issue was unresolved we didn't know where it would go. Now we're in a slightly different position because now we have a better idea of where it will go, which is why some of the folks think that a continuation makes sense; to continue it. Any further discussion? Hearing none. All those in favor of continuing it:

MOTION:

R. Cartier made a **motion** to continue it to the November meeting. A. Hall **seconded**. C. Robie, T. Giffen and J. Lindsey were in favor of continuing. K. Kustra **abstained**. **Motion carried (5-0-1)**. Case continued to November 1, 2017.

T. Giffen if things don't settle call and request that we move the continuance to a later date. C. Robie said if you want to wait until you get the wetlands permit. S. Tremblay said we have that one remaining issue and we're waiting on Fish and Game and they had said a 75 day period. I'm hoping that's worst case scenario so hopefully in 28 or 30 days we'll have the affirmation from them.

A. Bickum asked S. Tremblay to have his attorney double check and make sure that's it's just the five properties because I think across the street there might have been more at a later time. S. Tremblay replied there's been a lot of research done and she's pulled all the records. A. Bickum replied I did find some deeds that were across the street that had the protective covenants in them. S. Tremblay said yes so our *house (unintelligible)* is all just five. Now other people, it included us. So what we do with our land isn't contingent on them what they do with their land is contingent on us. A. Bickum said I get that but this is showing these but there are people over here that might have... S. Tremblay said we went to her saying there's 8 or 9 and she did all the research. A. Bickum questioned and she only came up with these five? S. Tremblay said it's all a surprise to us based on what happened last time but they said there's just five. A. Bickum replied okay.

Other Business:

MTAG monthly report:

T. Giffen said we received the MTAG monthly report from Carol Ogilvie. Everyone has a copy. A. Hall said I attended the second one and I think they had 25 or 30 there. It was well done and a lot of information and food for thought for the grant writer to expand on. T. Giffen summarized it seems they're making progress.

R. Cartier commented I've had some comments from people "what is the Town going to do over at four corners". Basically we're not going to do anything; it will be private people doing it but we'll look at some kind of enabling changes so the zoning can be proper for what the proposed uses and ideas are. A. Hall said the general population is confusing this project, the Village, with the state and federal highways 10 year budget plan 2018-2028, which they proposed. They proposed two T's, a T stop at the old Catholic Church and a T stop over by the old Seavey Garage. A connector road was mentioned and it got confused and it got mentioned in this Village project. These are two separate projects.

C. Robie replied two things; on this, Carol Ogilvie will be coming back to us with input. This isn't going to include a build out study for what may be proposed as a change. We should do our due diligence and support that and pay for this, her work, and we ought to have some documentation to back it up as to what is feasible to transpire. So that may be coming forward. And what Al just spoke of with the state

highway program, Monday night three of our community members, Mr. Lewis, Mr. Komisarek and Mr. Severino went to Bedford to hear what the state had to say about our possible project here in Candia. Maybe Mr. Lewis can touch on that.

D. Lewis said we're 10 years out on the plan. I think they're looking for input from the town's that were there on how important that funding is. There was nothing presented as a plan, that will be later on. They're basically there to make sure our money stays where it is and other voices don't move us around. The Bedford residents had a lot to say about their town. We all spoke in favor and how long we've waited and this isn't a new problem, it was a problem in the 70's and early 80's and when they moved 101 we got some relief from the traffic at those intersections however with the development in Northwood, Deerfield, Raymond, those intersections have now started to return to what they were pre 101. We've dealt with this problem for decades. So those comments help keep us on the list but when you hear about how vocal the Bedford people were, you worry would we get bumped, I don't know. They have these meetings every 2 years and it's important for us to be there every 2 years to stay on it so we don't lose funding.

R. Cartier asked about a conceptual plan that was done. D. Lewis replied I think there are 3 plans; two T intersections, roundabout, a bypass. I think over time that get's narrowed down. They didn't say.

C. Robie replied that would have to start fresh, new. The state is going to do the engineering. D. Lewis replied with our input and we need to be available and stay on top of it. C. Robie replied we are on the 10 year plan and out of the 20 million dollars allocated, Candia got 6.2 million. If we pursue this, we may end up with something very feasible not only for the Village District but for the traffic problem. D. Lewis said someone from Bedford asked about the money being today's dollars or 2028 dollars. Its 2028 dollars, they factored that in. We need to stay on top of it so we don't get bumped. C. Robie reiterated it's important to attend. When it comes to the Selectmen's office again, I'll let you three know again.

T. Giffen commented on the MTAG study; once a realistic plan is developed that we then look as a Planning Board at what we need to do to provide support of regulations or any zoning changes, to get those in the works. C. Robie said she is going to write the changes. That's coming from her. She's going to come to us and ask us and we're going to have to fund that (*a build out study*). We have some money left in the planning budget.

Crowley Road Subdivision Traffic Study:

T. Giffen said it's my understanding we don't have our official copy yet. I did take a look at the Chester website and pulled up a copy. I am recusing myself from the Crowley Road matter due to a potential or perceived conflict of interest. The Vice Chair, Al Hall will take over for me. I'm not going to speak to the traffic study but I would encourage everyone to read it and take a look at it. A. Hall replied the final traffic study is so large it's going to stay in the PDF version. A. Bickum replied 192 pages. D. Lewis said there is a summary page. C. Robie said it's irrelevant until they come and re-apply for an application. A. Hall said the ball is in the Chester Planning Board's court. The hearing was continued to I believe next week from last month. They won't be back in Candia until they finish in Chester. C. Robie asked has Chester accepted their application. A. Hall said no, it's been continued for several months. J. Lindsey said are we getting confused with accepted and approved. It's been accepted because their talking about it. A. Hall said yes, it's been accepted, I apologize. C. Robie said we have not accepted an application. K. Kustra said the traffic study is incomplete as most of what they did was in good weather, not bad weather. T. Giffen responded the study is going to be reviewed by 3 parties; Chester's engineer Dubois and King; SNHPC and Stantec. So to me the study isn't yet meaningful because it hasn't been subjected to independent review by the three parties who will be responsible for doing so. A. Hall mentioned and possibly the Raymond Planning Board. T. Giffen replied they don't seem to be interested. Their primary concern would be the affect on Fordway, the runoff. But I'm recusing myself so I shouldn't talk about anything beyond procedural. The procedure would be they'll have to come back before we have anything to discuss and before we as a Board can consider the traffic study, we would be well advised to wait until the professional review has occurred.

A. Bickum commented this was just to notify the public that it's on Chester's website and that there is a link from our page to that. That was it. T. Giffen summarized the document is available for those who are interested it's on the Chester website, the end.

Tree Cutting:

K. Kustra asked about the tree cutting. T. Giffen confirmed the public service that we approved awhile ago.

D. Lewis confirmed they've done a lot all over town. A lot on North Road and Merrill Road. It's a tree here and there, it's not that noticeable. R. Cartier said on New Boston Road too.

MOTION:

A. Hall **motioned** to adjourn at approximately 7:36 pm. J. Lindsey **seconded**. **All were in favor.**
Motion carried (6-0-0).

Respectfully submitted,
Andrea Bickum
Land Use Secretary

cc file