

Candia Zoning Review & Revision Committee
Minutes of October 19th, 2016
Approved Minutes

Present: Sean James; Scott Komisarek; Ken Kustra; Rudy Cartier; Joyce Bedard; Carleton Robie; Boyd Chivers; Dave Murray, Building Inspector; Dean Young, Fire Chief; Dick Snow

The purpose of this volunteer committee is to review potential changes to the Town of Candia Zoning, Subdivision and Site Plan regulations and make recommendation for changes or additions to the Planning Board. This meeting is open to anyone that wants to participate.

Minutes from September 21, 2016:

It was the consensus of the committee present to accept the minutes of September 21, 2016 as presented.

Guests Present: Attorney John Cronin representing Bill Scott and his partner Dan Robinson, owners of the Candia Sand and Gravel on Route 27 were present.

J. Cronin introduced himself; my name is John Cronin, I've been here before you on various matters over the years and I was retained sometime last year by the gentlemen here with us Mr. Robinson and Mr. Scott down back. They acquired a large parcel of property somewhat involuntarily. They were doing some financing on the old Raymond Sand and Gravel parcel, which I know has a long and I'll say checkered history with the Town and some of the history and research that I've done. They own that particular property, a portion of it is over in Raymond that they've been running a recycling operation. When they acquired it, their first mission was to clean it up. Take care of the neglect that had been there for a number of years and I think all would agree that they've done a pretty good job with that. Their second was to look at it and say how can we use this at its highest and best use, which is the goal of any property owner. They hired an engineer, an engineer that specializes in these sites, and collectively it's between 72 – 74 acres in your Town. They've looked at it, it's zoned residential. The sense was that even though there are some residential pockets on Big Island and Island Road, that generally it's in an area where there's some commercial and light industrial uses. With the Master Plan, there is some discussion throughout about the advantages of having some commercial and light industrial and that area seems particularly suited to it. There was an attempt, probably initiated by the engineer, during what engineers do to try and maybe come up with a small piece of it and go forward with a variance and see if they could obtain some relief in that regard. When he came to me, I looked at the criteria and variances in NH, the burdens have changed somewhat, through Supreme Court decisions that are a little bit relaxed, but my sense of being a land use lawyer doing this for some time, that it's such a sizeable parcel and it will have an impact on the Town, no matter what goes there. If they say, hey look we're limited to doing housing, there is supply and demand for over 55 housing now which puts different strains on a community. Traditionally Colonial housing with children puts strains on the school districts and you can put a lot of housing in that particular area. Their feeling was that it probably wasn't best suited for it and some of the allowed uses in the light industrial and/or commercial zones would be more suitable and it would make more sense to do this in a collaborative effort with the Planning Board and all the people that are stakeholders in the Town and try to come up with something that makes some sense. These folks are willing to do phasing, do things that maybe have untraditional buffers so there is adequate protection for those residences which if I lived over there, I would want to make sure if there was a commercial or light industrial use; that it wasn't going to impair the value of my property or the quality of life. I looked at some of the other more modern ordinances with certainly larger communities that have updated them from a regular point in time, I'm working over at the Macy's project in Bedford and that's kind of a product of their performance zone,

which was somewhat criticized when it came in because it was very broad, it didn't have a lot of specifics, but the good news is that it gave the Planning Board a lot of control. It gave an applicant, someone with a large parcel of property, to propose a mixed use, maybe some housing to create a meaningful and transition buffer from the housing to maybe light industrial and commercial and do it in such a way that you could do it collaboratively without, no offense to Mr. Chivers, having to go to the ZBA, where you have a different standard. We certainly welcome his knowledge, he's been doing it for a long time and his input in this, I would think he would be the type of stakeholder we wanted to talk to or maybe get input in and say we'd much prefer to do some type of zoning planning with you folks. We would bring our engineers in and bring the people that have a lot more technical knowledge than I have, willing to make a proposal to you but I didn't want to be that forward and come in and say performance zone is something that's suitable for you. I'd like to hear your feedback, if it's something that you're open to, if there is anything that you'd like us to do, maybe bring some engineers in, maybe draft a potential zoning amendment for you to take a peek at, or if you're set on residential and say "hey we're not flexible at all", that's important for my folks to know as well. Thank you for the time and the opportunity to speak.

S. James said thank you. That's a lot to think about. In general it is residential now and we'd have to do a warrant article for anything to move forward. I'm not sure looking at the...I'm looking at our schedules here for that, basically by December 14th is the last day to accept petitions to amend the zoning ordinance so just time wise, I don't see us getting this done by then.

J. Cronin responded that's only for citizen's petition right, you have additional time that would go into the New Year for Planning Board to propose an amendment. And we can do a citizens petition but I don't think those are looked upon favorably, I think it gives the planning team and the stakeholders less input.

S. James replied you're right. We do have until the middle of January is the last date to hold the first public hearing by the Planning Board. Is this time wise, you're trying to get done for a project next year?

J. Cronin replied they're sitting on a large piece of land that's currently really unproductive and so it's not something that they envision that this is a one year deal, build out 74 acres and move on. It's going to be a long process. They would like to get started on it. In terms of drafting an ordinance, thanks to Microsoft and technology, I can go back to my desk and press a button and get all kinds of zoning drafts out for a warrant article, pretty quickly. That's not that difficult to do, but I wouldn't want to do that without you people embracing it and saying "yeah, we like this; we want to have a greater transition from the existing residential than is typically found in an ordinance, because we're more sensitive to this area. We may want an area, rather than call it commercial industrial, we'll call it flex zone as opposed to a performance zone. There are a lot of things that we can do on paper and it doesn't take a lot of pages. The trouble for me is to figure out what it is that you're thinking of long term in connection with your Master Plan. Every community that I'm in, it's a love hate relationship with commercial and industrial. They bring trucks and big buildings, they do create some jobs but most Towns covet the tax revenue because it's really not a high demand on municipal services. Some towns, and there are several in NH that say we don't want any commercial at all. There are others that say we don't want any apartments so it's important for us to get the flavor of what you folks are thinking about or even if it's on your horizon. If you say "hey it's not something we really thought about or we're not really prepared to address now, we could go with a citizens petition or try and do it piecemeal through the variance process and it's more helpful for me going through the variance process to establish a record and say hey I went to the Planning Board and tried to discuss a zoning amendment or a zoning change and they said either we weren't ready for it or it's just not something that's in our horizon. So my goal in all of these cases and my experience, I have some scars from the adversarial process when you try to butt heads, it doesn't really work well for you folks, it doesn't work well for the clients, it may work well for the lawyers pocket book but that's not really a good way to do municipal land use planning. I would like to engage, maybe there's a select number of

people or you have a sub-committee and Mr. Chivers if you will, I'm not trying to create more work, but people that sit in on it and we have a discussion and say hey, this is what we're thinking, I'll bring an engineer, some phasing plans and that sort of stuff and see if there's a way to construct something that you can work with. I can't make any probable with the clock and I don't expect you too, but if we start on that process and we get to a point, it may have a life where it leads to a point where we all feel comfortable with doing something.

R. Cartier asked do you know what the abutting zoning is in Raymond on that side of the property but also the other side where the apartment buildings are. Is it commercial, is it industrial? J. Cronin responded well I know they are doing the recycling operation on this side so I believe that allows some commercial and industrial use. I can't speak to the apartments but I can certainly find that out.

R. Cartier said that would probably be something that would be appropriate to look at too. J. Cronin said I'm going to ask Mr. Scott to introduce himself.

B. Scott introduced himself my name is Bill Scott and this is my partner Dan Robinson and he certainly, he's a lot smarter than I am; we appreciate him being here. To answer your question, it's zoned commercial next door to us. The parcel next to us has a house on a commercial lot and then next to that is commercial all the way down to where it splits off, I don't know what main road that is there but it splits off and it goes commercial pretty far down. The distance I'm not so sure of but directly next door it's commercial.

R. Cartier asked but its not commercial industrial, it's commercial as far as you know?

B. Scott said as far as I know, it's commercial. The abutting property.

S. Komisarek commented my general sense is when you drive down there and you head toward that Raymond line and you have the furniture place, Country Woods and the uses that you have in there, of course the old road to the beach, when I just drive on 27, that does not have a residential feel to me. I can't imagine somebody plopping residential homes in the middle of that, that doesn't seem to make sense so the idea of generating revenue for the Town of Candia through commercial or light industrial, would seem to make the most sense. One comment I've heard is that there was concern about all the ledge that's in there and about the blasting that would occur. But we just had an education on blasting, blasting technology on that application that just came before us and so I think that sort of calmed my fears a little bit. I've heard stories of blasting and rock going onto neighbors windows and all kinds of irresponsible things going on over there so I guess in this day and age with Maine Drilling and Blasting and all the technology, it's really not such a big thing. When talking about highest and best use, it would seem like a light industrial down there or commercial would make the most sense. I'm glad you mentioned the sensitivity to the pockets of residential in the area as well. But it seems, when I drive there, can you envision a cul-de-sac in there with homes?

S. James said no, I think you said what I was thinking. One question I had you talked about different types of zoning if it was just simply light industrial or commercial today, is there something that that would preclude that you're looking to do?

J. Cronin replied your table of uses is not as developed as some others; they are kind of broad in how you classify things. I think a flex zone because of the size and if you had a big employer that came in and say they had sales but they did some manufacturing or they did other things, does it fit into commercial, does it fit into light industrial. You could fall in between but I think either or might work, light industrial being better because it might capture more but I wouldn't be opposed if I made a proposal to come up with something that's flex and gives the Planning Board the opportunity to define what it is. Most of the ordinances today you see there's definitely an enhanced buffer on transition lines so whether I go from residential to commercial or residential to industrial or residential to MDX, there's going to be a 100' buffer as opposed to what you might see a 25 or a traditional setback. We have no issue with that. We have no issue with taking that language in the buffer and enhancing it to provide some landscaping and things which would be under you're general purview for sound and visibility and all that sort of thing. And in some instances, along the existing residential, even though it

may not be wise to do it in the course of a zoning amendment because this parcel is somewhat unique, I can represent, if we came in with a plan, we would have a discussion with you and if you needed more than 100' or if those abutters did, we have enough land to design around that. With respect to blasting, legitimate concern. I have a new house 3 doors down from me, a foundation was blasted recently. I was concerned. They did a pre-blast survey, thankfully nothing went wrong. But I think that zoning and blasting are two different things. A potential for blasting where there are safeguards, modern technology and most importantly, we have the reclamation process which the state controls. If you're going to do any type of blasting or mineral removal or anything like that, you have to get a reclamation plan approved and the smart people on large tracts like this and the pros that do it, they usually do it in phases. So it's not like we're bringing in all the drillers in here on Saturday and then they are going to clear cut it and get it done by Friday. They take a piece and it's selectively managed because insurance is high. The way you operate and your plan profile has a lot to do with what your premiums are and the people that do this don't want any troubles either. So they're taking precautions to do it right and that's something you as a Planning Board or maybe even the Board of Selectmen would have, I haven't looked at your blasting ordinance, you probably have one but if you don't, we could come up with one or at least agree to it. The process of any submitted plan. I think there is a lot of opportunity here. I'm willing to dedicate my time and resources to it, I know the applicants have consulted with some engineers, in state and out of state, that have particular expertise in these types of projects so that they can do it on a win-win basis.

S. James said give us a sense of what kind of, say you open up phase I tomorrow, not specifically what it is but a sense of what it could be. J. Cronin replied I think the options are unlimited in what you could attract. You have a great connector in 101 and you look at what's happening over in Portsmouth, what's happening over in Manchester. That park that went in in Auburn, on the road coming out of Wellington from Manchester, went in over 20 years ago, people thought it would never make it. That's doing awesome. Similar site to this, maybe not as large, and that is how I would envision it. There are some first class office buildings in, there's some flex space with office and storage, there's some mechanical contractors that have plumbing and heating that have their offices and concealed storage for their vehicles and inventory and it's worked pretty well. That might be an area to take a peek at as that would be the type of development that might work here. There'd be demand in the marketplace, clean, clean and good jobs, and I think it would generate a significant amount of tax base.

D. Snow commented that it might be helpful if they had a little historical perspective on this. That particular site has been before the Town three times to change the zoning on and each time, the residents within the 10% area have used that statutory tool to be able to say you have to have the 3/5ths. So you need the 3/5ths to be able to make a change to this. And that goes back many many years, the people that are there, haven't changed. I happen to agree that that would make sense to move that into an industrial or commercial use because at some point that rock that didn't get blasted in Candia is going to have to come down. It's going to happen one way or the other but I feel sorry for these guys but I don't believe that unless you were to go through and wait until the houses came up for sale and move the houses and move up the road and had all of that land that you're going to be able to get it thought the Town, and if you can't get it through the Town, then whatever the Board is trying to do isn't going to work.

J. Cronin replied I appreciate the history, I knew there was some but I didn't know it was three times. And the protest petition, I've been on both sides of them, there something we have to deal with with respect to zoning changes. If we go through this process and it were to fail for whatever reason, say the protest petition surfaces. A lot of times what people don't think about in that circumstance, it really opens up the hardship avenue to a variance, so they may prefer to have a use that's gone through the Planning Board and it fits into a definition of an existing ordinance than they do having this developed piecemeal through different variances. There's also some appellate review on that protest petition, it's expensive and there's a commitment to it. I've done it before and succeeded. I've done it

before and not succeeded. That's going to be the client's call on how they deal with that. My hope would be that we would do a good enough job and make a quality presentation that we could alleviate a lot of fears of those residents and if we did more than what we were required, that they would hopefully prefer to deal with us than someone downstream. I can't speculate on that outcome, I know it's a risk, I appreciate you letting us know about it, because it's important for these fellows to consider it because it's their pocketbook that's going to be at stake as they go through this process.

S. James commented my thought is that we have Planning Board meetings twice a month, this is a once a month, ad hoc group, and generally we're dealing with, last month was in-law apartments and getting up to speed and changing our zoning ordinances a little bit for that. I think what you are talking about is a little above what this group typically does and there is also four Planning Board members who aren't here. I don't hear anyone against the idea, I'm not against the idea, and I wonder if maybe the best venue for it would be through the Planning Board, just throwing it out there, but if you are interested in coming back, come back and do a work session or part of a meeting work session with the board.

J. Cronin replied I would love to do that, great idea. Are you familiar with Mark Fougere, do you have any conflicts with him, have you hired him as your consultant do you know in the past? S. Komisarek asked is he the part time planner for the Town of Amherst? J. Cronin replied he's in the Board of Selectmen in Milford. He used to be the circuit rider for the Southern NH Planning Commission and he's a contract type of planner, I think he does Hollis, he may do Amherst, he does Henniker, he's pretty well known in the state. Ben Frost is one that works for the municipal association and Mark is another guy that has a talent in crafting ordinances, usually working for communities. I've spoken to him about this and asked if he would help us out trying to craft something that made some sense and he's willing to assist us. I think he'd be a real valuable resource, I can bring him back; maybe get some things on paper, some more graphics. This is preliminary for me, we found out about it but we can drill down a little bit deeper and get some more details. Maybe get Mark on board to help us with some drafting, he can listen to your concerns and the concerns of the public and maybe collectively we can come up with something that makes some sense.

S. James said ok, that sounds reasonable. J. Cronin asked how would I schedule that, would I call and try to get an open spot on the Agenda. S. James replied you can call up Andrea here in the Land Use office. One question I have as far as notification...if you had a project and you had an application, obviously we'd have public notification I'm curious about what your thoughts are on that. Dick brought up some past history. J. Cronin said I don't think workshops need to be noticed but I'm not opposed to it. The more people that have an interest in it and that are concerned about it, as much as I'd like to have everyone stand up and say yeah I'm for it, I'm somewhat realistic and if there are people that have concerns and were opposed to it, I'd like to hear what those problems are so I can try to address them. Maybe I can't but if I don't know about them until the time it comes up for a vote or someone never says anything and goes in and votes against it or formulates a protest petition, it's kind of late in the game to have a meaningful conversation and say what can I do to alleviate your concerns so if there's a notice, I can talk to my clients and the cost of publication and for the size of what we're talking about I don't think is an issue or if you wanted to do a mailing to direct abutters or do some kind of notice, I'm receptive to whatever you folks want to do. S. James said I think what I had in mind was we'll have you on, we'll list it as a work session in our next meeting, we have one application right now and we could do the work session afterwards and I think a direct abutter notification would be good. J. Cronin replied yes. S. James said I agree with you, it would be good for the Board and the proposal to get all that stuff out in the open and either allay their fears or not. J. Cronin replied the best ideas we get are from people that are concerned and maybe angry.

D. Snow said John if you had a recording of that hearing that they had before us the last time, and they didn't show up and all the people were here and you heard the comments from those people they're trying to find the guys, isn't there some way we can shut them down, that would be very helpful to him to be able to understand that it's not us he's got to convince, it's the people over there. J.

Cronin replied I was here for that and I chatted with them outside. D. Snow continued right after the bankruptcy and Cunningham came up there and was working on it, he went and tried to smooth the people around and had them in at least an ok we'll give you the opportunity but I don't think you're going to get past those people. J. Cronin replied all we can do is try. D. Snow said the last vote we had on it, it didn't even come to a majority, never mind the 3/5ths. J. Cronin said you may be 100% right but if that's the case, there's an application to go to the ZBA, and I didn't think I was doing my job to go into the ZBA and try to get relief until they tried at least to get a zoning change, I think that's the better course to follow. If they can't get it, that changes the game a little bit, for us, and it limits what we can do and maybe we have to go the ZBA route but I can't predict the future. I hope you're wrong, not on a personal basis, but you may be 100% right but we're not going to know until we try. S. James said so how about we leave it like this, get in touch with Andrea in the Land Use office, I would say if you could do the direct abutters, a week's notice, again we don't have to legally notice it but I think that would be worthwhile and we'll get you on the agenda. J. Cronin said that's great. S. James continued I think that would be the better venue to talk about it. J. Cronin thanked everyone for their time and for listening and giving feedback. The guests left the meeting.

Comments Pertaining to the Sand and Gravel:

Remaining Present: Sean James; Scott Komisarek; Rudy Cartier; Joyce Bedard; Carleton Robie; Boyd Chivers; Dave Murray, Building Inspector; Dean Young, Fire Chief; Dick Snow

C. Robie said that Mr. Scott, 3 years ago they were in here and they need to have a reclamation plan, number one. Once they have that, which they were told, and then do their reclamation and then come back, there may be a different view of how people look at it. Never been started, never had a plan. That's why plans are so important. If they had a plan, then they could move forward with their plan, start reclaiming that and then when it was all pretty and good to go, come in with a zoning change. The reclamation plan is number one.

S. James replied I wish you had said that while they were here, I didn't realize that was the case. C. Robie we all know that, it's been going on for years. It's been mined out and needs to be reclaimed. Mr. Cole mined it all out. Then it was sold it to McLoughlin and then Mr. Scott and Mr. Robinson, who were in three years ago. Start with a reclamation plan but it's not cost feasible.

There was talk between the remaining members regarding the site, mining and reclaiming:

Before there was any regulation, it was mined illegally in a residential zone and mined and mined. Then there were lawsuits and fines put in place, bankruptcy, ownership changed hands and then you get Mr. Scott but reclamation is number one. You can't afford to blast it, process it, and reclaim the site. But you need to do that to develop it. It's not buildable in the condition that it's in. The plan was with Cole, bankruptcy, land sold, reclamation plan got thrown out due to bankruptcy, plan part of plan included reclamation as they went along so you have it as part of a development so we get what we want, the reclamation, that might not happen all at the same time but they want to do a phased process, we could make that part of the planned approval. Cooperative venture. There's not enough material there, to blast the material, sell enough material to do the reclamation and build a road. The numbers don't work. They'd have to come up with a way to finance that.

S. James reiterated just so I'm clear, there are new owners, Bart's has a stack of papers this high, in the end the Town said you need to do the reclamation and they never signed or agreed to any of it. If they come back, that would be question one, where does the reclamation plan stand.

It would be wonderful to see a light industrial park down there, but it has to look nice. 3 years ago, they wanted to sell material out of that site. D. Snow suggested get a buck a yard, then you'll get it passed.

S. James commented that the main issue for the Planning Board is that the Town has legally told them you need to reclaim the sit and before we can allow them to do, build a house; a mall or...it goes with the land. They can change the zoning but they'd still have to come in with a reclamation plan but the economics aren't there. Be interesting to see what they come up with.

Zoning Ordinances, Village District, Regulations, Warrant Articles & Master Plan:

B. Chivers asked if accessory use dwelling ordinance will be on the ballot. Anything else? S. James said we'll hold a public hearing and the Planning Board needs to vote on it all before the middle of January. Right now we don't have anything else, no. No other proposed changes to the zoning ordinance.

C. Robie asked about the village district, grant to do a study, opportunity to get something in front of the voters in March. S. Komisarek said the consensus of the Planning Board last time we talked, was that it may be a good idea but we really want to study it properly. Village District...so as part of this with the conversation I had with Jack, there's a lot to figure out and the sense from the Board it's a lot to try to get it done and get it right. We look at that grant and the work; I don't know how you get it done this year. Jack said it's not really reasonable, to try to get everything done. You need the public's input, all the information we really need from that first grant and does it make sense. It makes more sense to do it step by step and do it right and then you have time to notice people, to do the fiscal analysis, look at the water and everything and does it make sense there.

S. James said the other thing we've talked about and it wouldn't have to go to a warrant and Sharon and I worked on it for quite awhile, was combining, not changing, just combining our Subdivision Minor Major Site Plan into one, one set of regs, and where there's overlap, one in particular, the signs; if you look in the various documents the sign requirements aren't all the same, they are a little different. Not try to wholesale change it but where there is overlap and process overlap, just put it in one document. It's a lot to bite off. It would not have to go to the voters.

C. Robie asked if we were going to write a warrant article for Exit 3 to change that language. The Selectmen would have the authority to sell that Town owned land if the right applicant came to the community that they could move forward with approval on the Planning Board and the give the Selectmen the authority to sell. The Select Board would accept an applicant to buy the property with a plan, if the Planning Board approved, they could move forward and sell the property. R. Cartier asked Carleton doesn't the Board have that authority now but it's limited to approving only for grocery store so you just need to take out that part. Take that limit out and it's a minor tweak to the current article.

B. Chivers said we have a warrant article ready to disclose Monday night to the Board which releases the Town from all prior restrictions on the sale of Exit 3 property and Bart's approved it. So Monday night we'll present it to the Board and see if they accept it. Hearings under 41:14A that said RSA that we adopted years ago, so that hearings have already been satisfied. This warrant article will give the Board of Selectmen the authority to sell this property, no restrictions.

S. Komisarek said once we get that and the grant money, we can look at it. Assessed value sitting there and we should be out in front of it. Have a good plan in place that makes sense for Candia, we're going to get the economic development, Mark Laliberte is working with Dread and he wants to wait until we have the Master Plan stuff done. Form that Economic Development Committee and Exit 3 would be top priority.

S. James said once Master Plan is ready, we'll have action items to work on. Pick out top 2 or 3 and work on those and money to get some help with it.

Meeting was **adjourned** at approximately **8:15 pm**. The next ZRRC meeting will be November 16th.

Respectfully submitted,
Andrea Bickum
Land Use Secretary