

Candia Zoning Review & Revision Committee
Minutes of September 20, 2017
Unapproved Minutes

Present: Tom Giffen; Al Hall; Rudy Cartier; Carleton Robie;
Dave Murray, Building Inspector; Dennis Lewis, Road Agent; 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.

The meeting started at 7pm following the Pledge of Allegiance.

Minutes from August 16th, 2017:

A. Hall **motioned** to accept the minutes of August 16th, 2017 as presented. C. Robie **seconded**. R. Cartier and T. Giffen were in favor. **(4-0-0). Motion carried.**

Guests Present: Bryan Ruoff from Stantec Engineering

Continuation of Stantec's Review of Candia's Current Regulations; Earth Excavation, Major Site Plan and Major Subdivision Regulations: Completed: Earth Excavation

Major Site Plan Review:

The ZRRC committee reviewed and discussed the proposed changes (*track changes*) in the Major Site Plan Regulations binder supplied by Stantec.

Section 1: Administrative Authority – D. Murray asked about **1.05**, it's not a change but: **Prohibition of Construction Prior to Approval: No construction, change of use, land clearing....**everyone has the right to clear cut their land and then they come in for site plan. Does that really need to be in there? C. Robie said I had that also. If he hasn't made an application yet, you can clear. That's the issue here. If I want to go up to my house and cut all my trees down tomorrow, I can. But I can't do that if I've applied for an application for a subdivision. That's how I interpret that.

T. Giffen replied this seems to make an assumption that a plan is in process and that wording needs to be there. B. Ruoff commented where this is inclusive of the site plan regs, this would only apply if someone were applying for a site plan permit.

C. Robie said it comes up again *on page 11, section 5.02*. It's the same. Like Bryan just said, if somebody has a site they want to do a major site on, they can clear that on their own, but once they apply for an application, this says that they can't do that on their own any longer, until they've been approved.

Further discussion ensued regarding the intent of the wording in the regulation.

C. Robie suggested let's use the development that is going on at Exit 3 as an example and what we went through with the abutters and their buffer zone. 15 years ago when the former owner clear cut that lot prior to any approvals, everybody was in an uproar but he had the right to do that. But let's say these gentlemen went in there and cleared the land before they were aware of the 100' buffer. That creates another issue that has to be addressed in the Planning Board as to how are you going to replace that buffer. T. Giffen replied and a code enforcement issue. Ignorance is no defense. C. Robie replied if you're not applying for an application, there's nothing that says you have to protect that buffer. If they own that land and want to cut the trees to the property line, they can do it. When they come in to develop that land into something other than what it was, then that issue of the buffer comes up. You can harvest lumber I think 25 feet from the property line with selective cutting. It's just an example of

what I'm thinking about. D. Lewis reiterated someone can log all they want but a logging operation is different from clear cutting and if someone were to go in and clear cut a commercial lot next to a residential zone, it's already clear cut before they come in now what are we going to do with the buffer? Someone has to plant it back. When it's in here, anyone who reads this is coming in to do some sort of subdivision or land development where the average person clearing a field or woods or whatever; that's never their intention anyway. Maybe it should be in here? C. Robie agreed, I think it should be in there to protect everybody. And if a developer wants to go cut before he applies for an application, he has the right to do that.

T. Giffen commented we have planning regulations, we have zoning regulations. Zoning determines what can be built where; planning determines the conditions that have to be enforced on a given piece of land. If you have a piece of commercial land that abuts residential property, I would argue that if the residential property owner wanted to go to court, they could stand on that regulation that says you have to maintain a buffer, whether or not there's been any plan, and I'd bet they'd win. C. Robie said we had that situation 15 years ago. T. Giffen replied and people got very upset. C. Robie said but there was nothing to be upset about though because it was his property and he hadn't applied for an application.

R. Cartier suggested can you put something in there to limit the restriction to commercial zoned property in the commercial zone or something like that? T. Giffen said I think that's unwise. B. Ruoff replied that's described in the zoning regs. You have buffer requirements and limits of clearing requirements in zoning and so you don't necessarily need it in your site plan regulations. If you wanted to, you could say within a certain distance of the property if you wanted to narrow it in a little bit. The idea of including land clearing, it's so the limits of clearing are laid out and pre-approved by the Town and everyone's clear on what's being cut and there isn't a misunderstanding and over-cutting that upsets residents. D. Murray said let's just **leave it like it is. NO CHANGE.**

Page 5 – 2.07 National Flood Insurance Requirements: B. The Planning Board shall require all proposals for development greater than 50 lots or 5 acres, whichever is the lesser, include Base Flood Elevation (BFE) data within such proposals (i.e. floodplain boundary and 100-year flood elevation). Discussion ensued about the 100 year flood, data, changing to current DES regulations. B. Ruoff commented whenever development is in the flood plain, I would want a comparison of the pre and post conditions in the floodplain. I wouldn't necessarily limit it 5 lots or 50 acres, I think any instance where you are in the floodplain you need to know what's going on.

There was more discussion on this regulation regarding the 50 lots or 5 acres wording; adding floodplain mapping.

B. Ruoff replied based on regulations, default to 5 acres; 50 lots doesn't make sense. C. Robie asked Bryan for a definition of the Base Floodplain Elevation. B. Ruoff responded so BFE means on a given site what the elevation of the water level at the 100 year flood, where that comes onto the site and if you're proposing a fill onto the site below that elevation, you would have to offset it so you don't have adverse flooding somewhere else, on someone else's property.

There was discussion regarding flooding on Brown Road. A. Hall commented we went to court on that and we won because the Road Agent mentioned two times in the last 5 years it was flooded, it was an inaccuracy in the FEMA maps. You can't include that in this.

C. Robie but when they engineered Brown Road, if they had followed the BFE, and they changed it and pushed it over there, that's what changed it. It never flooded before. D. Lewis replied when the road was in its old location, the elevation was way higher. The State moved the road but I don't think that flood map showed, even in a 100 year situation, that it was going to flood. But they revised the map since we've had a couple of 100 year floods. It may show it now. B. Ruoff suggested changing it to any development within the floodplain that a study be done.

Discussion continued on how to re-word the regulation.

B. Ruoff said it might have been from the State RSA originally. T. Giffen said so we're going to strike that. **STRIKE: *greater than 50 lots or 5 acres, whichever is the lesser.***

DELETE: B. Ruoff to delete an extra space above 3.02 Notice:

There was a question regarding **3.01 A. *about five days before the day of filing (in reference to the abutter list)***. T. Giffen commented the idea is to use the most up to date list you can get. C. Robie commented if a property changes hands with an abutter, two weeks prior to the plat being recorded, the new owner should go on because he's been there less than 5 days. If it happens yesterday and we're recording today, you can't catch that. **NO CHANGE.**

Page 7 – Application fees. A. Bickum said the legal notice fee, 2nd one down where it says \$50, should be **\$100**; the abutters is **\$7.56** currently (*subject to change*). D. Murray said **No. 8** should say **\$26.00**, not \$264.

Article 4.00 Submission Requirements: 4.01 D. Murray pointed out that Mylar with the application; we don't do the Mylar until the final. B. Ruoff said say you approve a site plan, are Mylars required to be recorded within 30 days or something like that? C. Robie most of the time, the applicant gets it approved, he's going to get that Mylar recorded right away. T. Giffen said so for submission for the application, we don't need one. **STRIKE that last sentence: *Copies must include Mylar for Registering at Rockingham County Registry of Deeds.***

D. Murray questioned on **Page 8, G. *intervals not in excess of 2 feet...*** is that too busy on a plan? B. Ruoff disagreed, to get the detail for a site plan for the First Stoppe or something like that; my preference would be 1 foot. I would say 2 foot at a minimum is good to have. If there's a really big site that doesn't necessarily need 2 foot contours, you could always ask for a waiver, which would be the exception and not the rule in this case. **NO CHANGE**

Page 8. N. *A proposed landscaping plan, designed by a Landscape Architect licensed in the State of New Hampshire....* T. Giffen suggested we may not need someone who's licensed. B. Ruoff said not all site plans will require a landscaping plan. It's a separate stamp from engineering. Randy Knowles is well known as a landscape architect. Proposed landscaping, I'm not an expert on, so it comes into more of the selection of greenery for screening for that sort of thing. Where screenings is required, you need someone who knows what they're talking about and what is going to last. T. Giffen said this is applicable to every plan the way it's written and I'm not sure all plans require it. C. Robie asked about the First Stoppe plan. B. Ruoff commented *in reference to their landscape plan* I'm not sure if it was stamped by a landscape architect but I think Doug coordinated with one, so it could have been. I've added some landscaping requirements for your review that give you more teeth as far as requirements so whether it's designed by a landscape architect or not, it's still spelled out a lot better as to what is acceptable for screening. R. Cartier asked what if we did landscape designer, I don't believe their licensed in NH. D. Lewis suggested if you just took away *Architect licensed in the State of NH* and replaced it with landscape designer. If the project is big enough, they may have a Landscape Architect anyway. But a smaller project, they might not want that expense. T. Giffen replied as devil's advocate, if a landscape designer isn't a licensed individual and there aren't any specific qualifications then, anybody or their brother can become one right now. C. Robie said they can now, if someone buys their plan. D. Lewis responded but that plan comes to the Planning Board for review so if the Board didn't like the plan.

Discussion ensued on how to revise the text.

T. Giffen suggested (*taking out proposed text of Landscape Architect*) it would read *A proposed landscaping plan indicating plantings to be installed and natural cover to be retained*. We can decide if it's adequate or not. C. Robie said Bryan has said further down it explains what we're looking for in detail. **STRIKE: designed by a Landscape Architect licensed in the State of New Hampshire.**

R. Cartier asked if **Page 9 W. A site lighting plan;** was redundant. B. Ruoff agreed. **STRIKE: W. A site lighting plan.**

Page 9 U. A signature block for signing by seven members of the Board. Discussion ensued on the proposed change from four to seven for the signature block. It was decided to leave the proposed change of seven in there so there is room for more than four signatures. **NO CHANGE.**

R. Cartier questioned **Page 9 4.04 Additional Information.** When we may require an impact study...*The firm, individual or agency shall be selected by the Planning Board.* Do we want to make something in there to have this in conjunction with the applicant? Didn't we run into that with the reviews and the applicant having the reviews instead of the Town deciding which engineer would do it?

T. Giffen said this opens a can of worms. As a matter of fact, there is a specific case where I'm recusing myself called Crowley Woods. Why? One of the people with ownership interest in DAR walked in to hand in his tax documents. If I don't recuse myself, some resident will think I'm being too lenient because we're doing his taxes at my shop. I need to walk away. However, hypothetically, such as the Crowley Woods project, they've already picked out their traffic study people. No consultation was made. And this is an existing regulation, not an amended one so technically they've already run afoul. R. Cartier confirmed for the Candia's portion of the traffic study? T. Giffen replied correct. It might stand in Chester, I don't know what Chester's regs are but it doesn't stand in Candia. B. Ruoff suggested by the Planning Board allowing the applicant to hire their own firm to do these additional studies, almost as second check, because then we could review it for you. So you have one firm, which if their honest, they're going to say exactly what's going on as far as this development and then we would review it and catch anything that wasn't presented from them. By removing this requirement and allowing the applicant to choose their firm and requiring it to be reviewed by the Board or the Board's agent. T. Giffen said I would strike that last sentence and replace it with the following: *the Planning Board or its agent shall review such study and determine whether such study in fact is sufficient.* R. Cartier asked but do we already have that in our regulations that anything that we want to have reviewed that comes into us, we can say we want to have Stantec review it. T. Giffen agreed. I think we need to get rid of that sentence. C. Robie addressed B. Ruoff and asked where would you get your information to find out if it's correct or not, are you going to do another study? B. Ruoff replied good point, if a study is done professionally, it's a cursory check. If they're trying to hide something, it becomes a harder issue. C. Robie commented if you see the name of the person they hire and you look at their background, their former studies, if they are accurate. B. Ruoff replied I'm trying to think what studies would be required, traffic would be one. We have traffic engineers that that's all they do so they would be able to confirm or tear it apart within 15 minutes. R. Cartier compared it to construction details you guys don't go out and do a field evaluation; you look at the plans and supporting documentation and say yes you have your ducks in line. B. Ruoff agreed. **STRIKE the last line on page 9, 4.04 Additional Information Which May Be Required: The firm, individual or agency shall be selected by the Planning Board.**

B. Ruoff to remove some highlights in the final draft that were left in.

Article 5.00 Action by the Board: T. Giffen said regarding *1. 90 or 65 days*, it's defined under RSA 674:4. B. Ruoff these changes that are proposed are to clean up the way it was written. It was written in track changes in the original. (*Should be 65 per RSA.*)

NO CHANGE, leave it as 65

R. Cartier on Page 10, **Article 5.00 Action by the Board 2: Upon receipt of an application, the Board shall provide decision in writing with seven (7) business days regarding the completeness of the application.** These come in and Andrea sends out an email to see who can come do the review. So let's say a review came in tomorrow, seven business days wouldn't be enough time to have the Board deem the application complete. We took a look at it, we figured what's missing, but we didn't make the decision on completeness, we made the recommendation to the Board. Discussion ensued regarding the time frame, 7 days vs. 14 days. B. Ruoff said in the lunch meeting the thought was if we went to 14 days that it may preclude people from getting on the next agenda that they submitted for, that we wouldn't be able to do the mailings in time per Andrea's input. C. Robie replied if a committee does a review, it will be complete enough or incomplete enough to tell Andrea. B. Ruoff said we could do a completeness review within 90 minutes provided we have someone available. Worst case we could hand it over within 24 hours. R. Cartier said we look at it but it's not a Board determination. C. Robie said I think that's the determination of the committee at that point; for her to tell the applicant whether it would be heard or not. T. Giffen said complete enough to be heard but not necessarily complete. C. Robie said whoever's reviewing it; it's their responsibility to tell her whether it's complete enough to be heard. R. Cartier said that's a good point. A. Bickum confirmed so if it's not...C. Robie said you tell them it's not complete enough. A. Bickum continued and you push them out another...C. Robie agreed. R. Cartier responded that buys more time because they'll have to submit the stuff and the clock starts all over again. That works for me. D. Murray replied it gives them a chance to correct what they're missing. T. Giffen suggested adding **or it's designees** after the Board. B. Ruoff said I would leave it as the Board as we can't write into these regulations that the engineer has any say, it's 100% your say. We give you recommendations. It's the same as the Completeness Review Committee; it's a recommendation for the Planning Board to make the ultimate decision.

T. Giffen replied so given that we meet twice a month, how does 7 days work into that? C. Robie said it doesn't. It says Board; in general it means that a quorum of that Board made that decision. I think a designee can make that decision, whoever does the review, can make that decision. T. Giffen said *the Board or its designee*. **ADD or its designee after Board in the first sentence under 5.00, number 2.** To now read *Upon receipt of an application, the Board or its designee shall provide decision in writing.....*

C. Robie commented on **Page 10 B. Issuance of Decision, number 2. Upon the Planning Board approving the Major Site or Major Subdivision plans the Town's Engineer shall develop a construction cost estimate for the purpose of establishing a project surety. The Applicant or Developer shall provide an acceptable form of surety in the amount determined prior to the Planning Board signing the final plat plans.** I don't see how that is enforceable because if someone comes in with a major subdivision and gets it approved and he's going to sell that property to someone who will develop it. The developer will bring in the security but the plan needs to be recorded once it's approved. B. Ruoff agreed. C. Robie continued because anybody can sell a piece of property that's approved for subdivision and not do any construction on it and the security is to secure the construction portion of that. High Street, the plan is recorded but they don't have a security yet. Before they can start construction, through the first construction meetings, they have to have that surety bond in place. D. Lewis said doesn't this just address that the number's there, they don't have to post it. C. Robie replied but that's not what it says. T. Giffen said it says they have to *provide an acceptable form of surety*. They need to get that bond. B. Ruoff suggested *changing prior to the Planning Board signing the final plat plans....*T. Giffen suggested it read *prior to the commencement of any*

construction. D. Lewis said it needs to be calculated but not posted yet. C. Robie reiterated you have to know what it's going to be. It's a number that they have to have for someone who wants to develop it but the plan still needs to be signed and recorded. This needs tweaking. **ADD prior to the commencement of any construction. Reword this paragraph.**

SUMMARY OF CHANGES:

1. **Page 5 – 2.07 National Flood Insurance Requirements: B. STRIKE: greater than 50 lots or 5 acres, whichever is the lesser.**
2. **Page 7 – Application fees.**
 - a. Legal Notice Fee **\$100**;
 - b. Abutters is **\$7.56** (*subject to change*).
 - c. No. 8 should be **\$26.00**
3. Article 4.00 Submission Requirements: 4.01 - **STRIKE that last sentence: Copies must include Mylar for Registering at Rockingham County Registry of Deeds.**
4. **Page 8. N. STRIKE: designed by a Landscape Architect licensed in the State of New Hampshire.**
5. **DELETE Page 9 W.** A site lighting plan;
6. **Page 9. 4.04 Additional Information. STRIKE the last line: The firm, individual or agency shall be selected by the Planning Board.**
7. B. Ruoff to **remove some highlights** in the final draft that were left in.
8. **Article 5.00 Action by the Board 2: ADD or its designee after Board in the first sentence.** To read *Upon receipt of an application, the Board or its designee shall provide decision in writing.....*
9. **Page 10 B. Issuance of Decision, number 2. Upon the Planning Board approving the Major Site or Major Subdivision plans the Town's Engineer shall develop a construction cost estimate for the purpose of establishing a project surety. The Applicant or Developer shall provide an acceptable form of surety in the amount determined prior to the Planning Board signing the final plat plans. ADD prior to the commencement of any construction. Reword this paragraph.**

MOTION:

C. Robie **motioned** to adjourn the Zoning Revision meeting at approximately 8 pm. A. Hall **seconded. All were in agreement. Motion carried (4-0-0) for Planning Board Members.** It was the consensus of the entire committee present to close the ZRRC meeting.

The next ZRRC meeting is scheduled for October 18th following the Planning Board meeting.

Respectfully submitted,
 Andrea Bickum
 Land Use Secretary
 Cc: file