

CANDIA PLANNING BOARD
MEETING MINUTES OF
January 15, 2020
APPROVED

PB Members Present: Rudy Cartier, Chair; Robert Jones, Alt; Brien Brock, BOS Rep.; Mark Chalbeck, V-Chair; Josh Pouliot; Joyce Bedard; Judi Lindsey

PB Members Absent: Scott Komisarek; Mike Santa, Alt.

Audience Present: Jason Lopez (applicant engineer), Armand Hebert (applicant), Attorney John Bisson (applicant attorney), town residents

*Rudy Cartier, Chair called the PB meeting to order at 7:08pm immediately followed by the Pledge of Allegiance.

Case #19-006 (Final):

Applicant: Armand & Susan Hebert, 2001 Cedar Street, McKenzie, TN 38201; Owner: same; Property Location: Currier Road, Candia, NH 03034; Map 402 Lots 51 & 57.

Intent: MAJOR subdivision. To consolidate the two existing lots (402-51 & 57) and then subdivide into 5 frontage lots for residential use.

J. Lopez starts by providing the Board with copies of revised new plans, a cost opinion for the road upgrades on Currier Road and the responses to the Stantec Review Letter dated August 15, 2019. He notes that the applicant had been holding off on the Stantec comments until the road upgrades were looked into more thoroughly with possible solutions between the Town of Candia and the applicant. He informs the Board he will provide a PDF version to the Land Use Secretary via email tomorrow as well.

R. Cartier asks if the responses have been provided to Stantec yet and J. Lopez says no, they have not because he was only just provided the reports for the road this evening before the meeting so he didn't have time to review them and send out the necessary responses.

J. Lopez reviews the cost opinion with the Board, pointing out what items they think should be included in the cost upgrades including selective tree removal, rocks in the right of way and ledge. Roadside ditches, keeping the roads 20 feet gravel as well as road shoulders and ditch line where we can. They'll have to grub out a little on the sides of the road, get some gravels in, establish some ditch lines. There are 6 driveways that we're going to cross, 2 of them will need driveway culverts with the appropriate headwall and flat end sections. There is an existing undersize 6-inch pipe which we'll replace with a 15 inch. We looked at the sizing of the culvert to be replaced, which is an old stone culvert. We ran a calculation based off stream stats on that and looking at passing the 100-year event, we come up with a 36-inch RCP round pipe. We're looking at guardrail at the top section. With that, Steve (Keach) put together a cost estimate and ran through a rational nexus test. It's five points to look at to develop one's "fair share" portion. The estimate is approx. \$100k w/\$20k as the developers share.

R. Jones asks if Candia's Road Agent (Dennis Lewis) was involved in any of the cost estimate processes and J. Lopez says no, there were a couple attempts early on, but it has not been presented to him. B. Brock notes that many of the items in the estimate were from the Road Agents input and suggestions.

J. Bisson continues the presentation on behalf of the applicant. He notes a 2008 Supreme Court case that assists Planning Boards and developers to try and figure out the analysis. RSA 674:21 set up parameters when there's development being presented and infrastructure that needs upgrades to serve it. This balance between 'do you pay for it all'; 'do you pay it now'...that's the whole rational nexus/fair share allocation. The 2008 case set up the test and what it tries to do is balance the infrastructure needs against the developer potential and the burdens it puts on the town to deal with any issues that might not be on your current list of things to do.

He notes that he has been able to attend a few other meetings on this project because he was here as a representative in another case. He says that he understands Currier Road is older, class 5, hasn't had a lot of attention in along time and probably hasn't made it to the top of the list of roads the Town would pay attention to. So, there is this new project and the developer wants to put more lots on it and everyone is concerned about the road, which makes perfect sense. According to Mr. Keach's report that just came out, it's about 2,000 feet on Currier that were concerned about. What does the Statute say and what does the Supreme Court say....you have to work this balance. The factors that you balance are 1st, what is

development causing the burden on the infrastructure? So the factors that the Court sets out are, what's the standard that the Town currently maintains the road, the frontage of the new subdivision of what's there, new traffic on the road, character potential for development of the neighborhood served on the road and the number of residences currently on the road as compared to what's going to be on the road with the new development? The Court is careful to say that isn't it and those are some but not all factors but doesn't really give you much more guidance. When you read the cases and the Statute, it really boils down to balancing the burden on the Town vs. the developer and how you do that. You try and come up with a figure that makes sense to impose as an impact fee on the developer as he comes forward to get his approvals. In this Statute, there's additional conditions that once you figure out what the # is, it gets paid in escrow, is held up to 6 years until the project is completed and improvements are done or to go back to the developer if it's not properly used by the Town. The benefit of the report is you have the engineering math, which quantifies those items we talked about. The Statute and Supreme Court don't tell you the formula, burden or how to do it.

J. Bisson states that he is aware the Board just received this report (cost opinion) before the meeting tonight and doesn't expect them to digest the information instantly. He notes that what Steve Keach has done in the report is to go through the particular criteria, set forth each of the tests and turned them into math. He briefly reviews the particulars with the Board, and it's determined that 20% or \$20k is the fair share of the developer for the approximate \$100k total road upgrades that J. Lopez stated above.

B. Brock confirms with J. Lopez that the area they are speaking about for this particular estimate is from Podunk Road to the Candia Town line. He goes on to say that it isn't something that is currently in the Road Agent's budget specifically for that which means another whole year. J. Bisson notes that the Town will have 6 years to spend the money and B. Brock says it's suspected that it will be spent relatively quickly because if the applicant gets approved, he will want to move forward. J. Bisson says the applicant pays the Town and the road can stay the way it is until the Town has the resources to do the work that's necessary. Ultimately, if it doesn't happen in that 6-year period, the money would go back to the applicant. B. Brock says so, the money goes back to him, the 5 houses are now built, and the road is still undone. So if the developer puts up his \$20k, it still doesn't mean the Town has or will have the funds to start such a project, but the developer can go forward and now the burden is on the Town to come up with those funds to complete the project. J. Bisson states that during the review and approval, the Town could decide that the actual improvements are never necessary and never raise money for it and all the Town loses is the money collected from the developer and the Town isn't out any money but also the upgrades are not done either. He goes on to say that during this decision process theoretically these improvements are being made because it's necessary and not because of the development.

R. Cartier confirms with J. Bisson that he is referring to RSA 674:21 (impact fees) and says that brings up a problem because that part of Currier Road is not in the 10-year road improvement plan. He would hesitate against going against that plan because of the knowledge of the Road Agent on the roads and why they are on that priority list. The other section of concern is RSA 674:36 (access roads) and the PB may properly consider the present condition of access roads when ruling on a subdivision application and if a hazard is created by the present level of development may find the future development is premature. That would be another thing to look at. The final decision when that road could be updated is by the BOS. The PB is taking a risk that the work would never be done and the road now is a hazard and having more people on there is not going to decrease that hazard, it's going to increase that potential.

J. Bisson states that the case law he refers to in the report deals with scattered or premature development. If the road is never getting the attention needed or addressed in a significant period of time, there may be a different concern. If the Town is saying it's unsafe, then at some point the Town has to do something. Leaving it unsafe and serving some but more, I don't think is the right response. B. Brock notes that he has discussed this w/the BOS but has not come up w/ and concrete decision yet because the other end of Currier Road is the more important issue right now. If this other side goes through a review with the Road Agent, it could change, and it could be added to the list or put on a 5-year plan or something like that. J. Bisson notes that if a road is unsafe and there are people living on it, the Town needs to do something regardless of 10 year or 20 years.

J. Pouliot confirms with the Board that the end of Currier Road in question is the road that the residents keep voting against being upgraded. He asks if this would have to be voted on by the Town/residents on Currier Road to have the upgrades? B. Brock states if there's a warrant article to address that and R. Cartier says if the Road Agent puts it in his budget it would have to go before the Town but he's

only been asking for \$150k per year to do the roads that are more critical to the Town. J. Pouliot asks why he didn't put in for this road then and B. Brock says he did, Healey Road and the other end of Currier because that is critical.

J. Lopez notes there has been a lot of talk regarding the traffic and they hired Steve Pernaw to go out and do an actual traffic count and he put them into the tables in the report as well for review.

R. Cartier states that the information provided to the Board tonight is good but needs to be reviewed further by the Board members, sent to the Road Agent, Stantec and Town Counsel for review as well. The fear is that we approve this and go on the idea of the work being done based on the impact fee, but it doesn't get fixed. That is not appropriate for the Board to do. J. Bisson states that maybe the applicant would extend the 6-year time frame. B. Brock notes if the BOS was on Board and the Road Agent, along with support for that, it may be acceptable, but that would take further review and discussion.

R. Cartier confirms that the material to be used on the road would be crushed stone and gravel. R. Cartier notes that the most expensive item is the crushed stone. He then asks what the rough cost estimate of the culvert is? J. Lopez notes it's broken into different parts and pieces in the report such as \$3,500 for precast headwalls, high density polyethylene 36-inch pipe \$3,200, then the guardrails, etc. to be added all up to the total cost. The wetland permit is also needed on this. If the Town goes forward with roadway maintenance, that's a culvert replacement, under the roadway maintenance program, so it's more of an expedited permit process and this allows up to a 48-inch diameter. R. Cartier says the Board would want to check with the Road Agent to see what it would take from a safety standpoint, to get rid of the problem at that narrow section of that road. J. Lopez asks if the Board is saying to possibly use the \$20k at the pinch point, at the culvert and when the Town can gather the other funds to do the remainder of the road? J. Bisson says they would have to look at the statute because the idea is to figure out the total cost and then allocate the share. You can't take the share and then change the total. J. Lopez states that what the Board is actually asking is if the developer added up all the items at the critical point the Board is concerned about would there be a new number for the fair share from the applicant. The Board confirms this partially but says it's not what the Board is looking for. A. Hebert asks J. Bisson if there is any way to do that? B. Brock states that he would not want to do that. R. Cartier states that the concern is the most critical problem and the PB didn't do their due diligence and the Town knew it was a problem and didn't resolve it or act appropriately.

B. Brock asks for a copy of the cost opinion for the Road Agent and states that he will also bring this matter up again at the next BOS meeting.

R. Cartier states that the Board is not comfortable approving the project at this time as it does need further review on these items. There are other possibilities that may resolve the pinch point on the road and how to get there is the hard part.

J. Lopez says he just added up the total for that crossing area, not including gravel, but I come up with \$22,650. Add some gravel in there and call it approx. \$25k, were looking at around \$5k for the developers' portion if we only looked at that pinch point. The Town would still be responsible for approx. 80% of that estimate for the pinch point as well. R. Cartier notes that the Road Agent has already stated that in his opinion, the whole piece needs to be done from a safety aspect. B. Brock notes that because there is already so many problems on the other end of Currier Road, is the volume of traffic. If you add another 100 trips a day on that end, it's going to show wear and tear and may start to have the same issues that are already present on the other end. J. Lopez notes the benefit of the higher ground at the project location end and B. Brock says it's still going to be an impact.

R. Jones asks if the 4 criteria are always the same for the cost nexus and J. Bisson states that they are the most common examples. The Court says these factors include but are not limited to them. They are designed as a guide. R. Jones says what really stands out and we seem to always go back to is the traffic count, and it looks more like a 50% increase on a daily basis. He notes that he has to look over and understand the other 3 criteria and it calculates in the overall math because it's really those other 3 that bring us down to 20% contribution by the developer. J. Lopez says if you look at the frontage test, it's next to nothing. So how much frontage does the applicant own and control along that? Though R. Jones is looking at the traffic count, which is the highest, the frontage test is the lowest. J. Bisson refers to the Upton vs. Hopkinton, case amendment of 2008, which states "no single factor can be determined. Factors relevant to determining the developers share may include but are not limited to...list the 5 criteria, and then says "and", not "or", so for only the traffic test analysis it would have to say "or".

J. Pouliot confirms with the Board that Stantec would be checking on these estimates before any approval.

R. Jones asks B. Brock if it's agreed to use the multi-test, on test #2 about frontage, how much more undeveloped land do we have on that stretch? B. Brock says he doesn't know at this time, but it doesn't count the Deerfield side either.

J. Pouliot confirms J. Lopez that the applicant is doing road improvements on the Deerfield side and asks if that is the same arrangement at the 20% and J. Lopez says no, 100% there. Deerfield wanted a ditch line built to get water off that line. The developer will post a bond with them for the road development.

R. Jones clarifies the reason behind his question and asks if that end of Currier Road is improved, does that offer up a better opportunity for someone else that has that property to then develop, and is that an area where the Town recoup some of those additional funds? B. Brock says no we can't go back and recoup once we've done this project, but does it improve it for future developments...absolutely. J. Bisson notes that between collecting the money (6 years to use it per applicant) and someone else on the road comes within that period, you can collect money from them to contribute to the same project. R. Cartier says correct and B. Brock says as long as it's still under construction.

R. Cartier notes that the information provided to the Board tonight is good but again it needs to be reviewed further and sent to the Road Agent, Stantec and Town Counsel. The Board also would like to get the BOS input on this and would be hesitant to approve this now because we know there's a problem, but if there's alternatives to take care of the problem, that's where we need to go and address those issues appropriately.

R. Cartier confirms with the Land Use Secretary that 3/9/20 is the deadline date for the application's final determination by the Board and may need to request additional time if possible, under the RSA.

J. Lopez notes they did provide the Stantec responses as well tonight. He notes that there was no determination by the Board at the last meeting regarding Regional Impact. R. Cartier states that the Board will formally vote that this project is of Regional Impact.

MOTION:

J. Pouliot made a **motion** to make a determination that this is a project of Regional Impact with the Town of Deerfield. J. Lindsey **seconded**. **Motion passed.**

J. Bedard asks how soon this will be on the agenda for the BOS and B. Brock states he will bring it up at the next scheduled meeting as a discussion.

R. Cartier notes that this case will stay on the agenda but if the applicant is not able to attend, please notify the Land Use Secretary so the Board can note the case will not be heard formally at that particular meeting. A. Hebert asks if they can continue it out to 2/19/20 because he will not be back in town and able to attend until then. The Board accepts that formal date of continuance and notes again that it will be on the agenda for the 2/5/20 meeting in case any updates or discussion need to come before the Board.

J. Lopez agrees to deliver hard copies of the presented information to Stantec for review.

Minutes -December 18, 2019:

J. Lindsey made a **motion** to accept the minutes as amended. M. Chalbeck **seconded**. J. Bedard **abstain**. **Motion passed.**

Minutes -January 3, 2020:

J. Pouliot made a **motion** to accept the minutes as presented. R. Jones **seconded**. J. Lindsey & J. Bedard **abstain**. **Motion passed.**

Other Business

- M. Chalbeck will contact Nate Miller from SNHPC regarding the 4 Corners estimate to develop the info graphic for the voting this year. R. Cartier will get the paperwork for the grant to cover possible costs. There is also a resident that would be willing to donate to SNHPC for the good of Candia.
- R. Cartier will work on an explanation of clarification handout for the Zoning Amendments to go out to the community through the Boy Scouts. Land Use Secretary spoke with Donna Becker (Accounting Clerk) and the charitable donation of \$40.00 from Max Nicosia has been accepted to defray the costs for printing the 2020 Zoning Amendment handouts. Any further donations can be delivered to D. Becker in the BOS Office for this purpose as well. R. Jones notes that the guidelines for the handouts are to make 1700 copies w/a check for \$100.00 (Town is exempt from this fee) and drop that off to the BSA Troop #120 at M&S Equipment, 33

Raymond Rd., by Friday, 2/21/20. The delivery will be the weekend of 2/29/20. J. Pouliot notes that an electronic version of the handout on the Town website, Candia Facebook page, etc. would be a good idea and the Board agrees.

MOTION:

J. Bedard **motioned** to adjourn the PB meeting at approximately 8:29pm. J. Lindsey **seconded**. **All were in favor.**
Motion passed.

Respectfully submitted,
Lisa Galica
Land Use Secretary
cc: file