

ITEM 1 - ROLL CALL

Present: Jeff Duncan - Chairman, Dennis Lentz, Larry Bouchard, Greg Whalen, Ed Cielszko, and Christine Bennett – Alternate.

Also Present: Lee Feldman, Interim Town Manager.

Absent: Melissa Horner – Alternate (excused).

Voting members: Jeff Duncan, Dennis Lentz, Larry Bouchard, Greg Whalen, and Ed Cielszko.

ELECTION OF OFFICERS

Mr. Duncan said that whoever is elected the new Chair would preside over the rest of the meeting. He asked if the PB wanted to proceed, with Ms. Horner being absent.

The PB agreed that they wanted to proceed.

Mr. Duncan said that, before we take the nominations for Chairman, he just wanted to make it known that he has entered his resignation, effective January 1st. He said that the PB would take nominations for Chair.

Mr. Whalen discussed the procedure for electing officers and wanting to make sure everyone was on the same page regarding protocol and process.

Mr. Duncan said that, as far as he knows, the voting members of the PB are able to nominate a person who is a voting member, or a full member, of the PB for an officer's position; that that nomination needs to be seconded and, then, a majority vote of the voting members would elect that individual for that position.

The PB discussed which officer positions they were electing tonight, what positions were needed, and what the duties should be.

Mr. Feldman said that this Board and Department are very much in flux and the Town Manager has redefined the position going forward; that it will be a very different position. He added that, that being said, he thought it was important for you folks to get a Chairman elected that will be running the PB going forward. He suggested they might want to separate your Notice of Decision Letters from the minutes; that the Decision Letters are very much this Board's to review and approve because that is the law, once a project has been approved; that the minutes, if anything were ever appealed or went to court, courts don't care about minutes; so, the minutes are really for you and your review. He suggested the PB not get caught up too much in these details tonight; that he suspects that, as a new professional staff person comes on and you're dealing with these issues, you may want to modify your by-laws further. He also said that he would be happy to look at the PB by-laws and make recommendations.

Mr. Lentz asked if Mr. Feldman thought that reviewing this one tonight would take the place of something we missed in there.

Mr. Feldman said that he is not sure what the Town Manager has done, to-date, but his call would be a call tomorrow to the Town's corporate counsel to find out because this Board is the authorizing Board of those Notice of Decision Letters; that if you haven't taken action and something has changed and, yet, the signed Letter was used by the applicant for licensing, he isn't sure what position the Town's attorney would take. He added that that Letter was signed; that he is assuming that that was regular protocol that the Planning Assistant signed those and sent them out; that it should actually be the PB, or PB as a whole, that signs those in the future, going forward; that those are the findings of fact that are the official approval of whatever was in front of the PB.

Mr. Duncan said that the Letter in front of us has a signature block carrying his name as Acting Chair with a date of approval, asking if he was correct in assuming that previous ones would have had the previous Chairman's name and it is possible that the Planning Assistant was signing for him as opposed to just signing 'by the Planning Assistant'.

Ms. Lemire said yes, that she was signing for him.

Mr. Duncan said that, technically, it was being signed by the Chair. He added that it may end up being prudent, moving forward, that it bear the actual Chair's signature. He said that it was said that the changes were only minor, and he sees one, asking if that was the only one.

Ms. Lemire said that she read the document (Letter), word-for-word, from what it was and Ms. Bennett had suggested that change; that it's in the minutes that there was a discussion the PB had about that; that even though the PB doesn't technically have authority over it, there was enough of a discussion that it could be considered a 'finding of fact'.

Mr. Duncan said in retrospect, in looking back, that 'fact' basically, in his mind, has no significant effect on whether this person could get through the code enforcement process or the State licensing.

Ms. Lemire agreed, saying that everything is under the control of the Fire Marshall's office, anyway.

Mr. Duncan said that he is suggesting that we take this under consideration this evening; that if it's to our approval, to approve it, and that the Chair follows up with the Town Manager tomorrow; that his thought was that a cover letter should be sent with this revised approval.

Mr. Feldman said that, if that is the case, he would suggest the PB act on it tonight and do the follow-up with the Town Manager and do the cover letter just to cover everybody on this. He added that the PB should not feel as though, if the Chair is not at the meeting

Mr. Lentz said that he didn't know but thought it was a good idea

Mr. Feldman said that he thought Mr. Whalen's suggestion was a prudent one simply because, again, that is your record going forward.

Mr. Lentz said that that was another new step, suggesting the PB do that.

Mr. Bouchard said that this is "review notice of decision letters, as needed"; so, if nothing changes from the time we approve it at the time it's reviewed...if it's reviewed, there's going to be a change; so, we are really approving it twice.

Mr. Feldman said that there would only be a change if, during the process, another condition of approval, or something, comes up during your deliberation that you add that the staff hasn't included in it. He added that, for the purposes of signing it, you can add it by hand, if you feel you need to; that if it gets signed the next day or gives Ellen time to fix it, that's fine, as well. He said that some places do approve the site plan review, with the conditions of approval, as proposed, and what he calls the findings of fact; that it can be done that way if everything is in order but, if something changes, you really want to have whatever staff is doing this clean that up, going forward, and take action on it at the next meeting. He added that it's not going to really delay anything unless someone needs to send it to the State for licensing, etc.; that once they get approved, it's pretty much perfunctory but you really should take a motion and a vote on these just to seal the record.

Mr. Whalen discussed the two words "as needed" that are after "review and approve minutes" and "review notice of decision letters", saying he doesn't know why those words were ever put on there and suggested deleting those two words.

After more discussion, the PB agreed to remove the words "as needed" for minutes and Notices of Decision and add the word 'approve' to review notice of decision letters.

Mr. Whalen moved, second by Mr. Duncan, that the Notice of Decision Letter for PB17-15 be approved, as amended.

VOTE

5-0

Chair votes in the affirmative

Nashwinter (PB17-22)

After discussion, it was agreed that the date in #9 of the Findings of Fact could be dropped. There were no further changes.

Mr. Cieleuszko moved, second by Mr. Duncan, to accept PB17-22, as amended.

VOTE

you would have; that we are supposed to be informed and independent agents on this PB and, so, for you to rely on what she or Mr. Cieleuszko saw on that site walk would negate that and we wouldn't be able to use that information so there really was no reason.

Mr. Cieleuszko said that he agreed with Ms. Bennett. He added that it raises problems if you don't like what you see, the applicant is sitting out there, and you are telling the PB what you see as problems that they (PB) haven't seen; that there are regular issues of a non-legal meeting when there's two of us there. He said that we aren't supposed to meet together in public, especially on a case; that you can't discuss a case unless you are in a regular public meeting. He added that he has many issues with that and with any PB member going down on their own; that you can drive by a property as a person on a road where anybody in Town can see but, the minute you go on the property, you are part of the Board, you might be talking to the owner, and that raises questions; that there is no winning there and should be avoided at all costs.

Mr. Whalen commented that the unintended consequences of anyone missing a site walk is that they should automatically recuse themselves from participating in the discussion or the vote on that application.

Mr. Lentz went back to the original question of whether you need a quorum to make it an official site walk.

Mr. Feldman said that you do; that if you are going to post a site walk, you need a quorum to attend, clarifying that you don't need a full Board but three people in your case to be present to attend that site walk, or, you just don't hold it. He added that, if not attending a site walk, you don't have to recuse yourself; that although it doesn't help if you aren't there and don't have that information, site walks are not a requirement. He said that site walks are what many boards do on a regular basis but it's not a requirement of the law, and he doesn't know if it's a requirement of Town regulations that you do a site walk on every project. He said that it was his understanding that Mr. Sylvester was going to be out of town for about a week, starting today, and he is aware that this discussion was going to occur tonight; that it is also his understanding that Mr. Sylvester wants to request a waiver of having a site walk, at this point, and he leaves that decision with the PB.

Mr. Lentz said that he thought we were sharing excellent information and the discussion is good but he hopes we are capturing all of those pieces; for example, what we said about a quorum and the site walk, and he hopes we see that in the by-laws as we revise them.

Mr. Whalen said that he thinks, in the by-laws (revised), it references that site walks shall be conducted pursuant to the terms and conditions of a regular meeting. He said, getting back to the question of disqualification/recusal due to non-attendance at a site walk.

Mr. Feldman said that that was correct; that basically all you would need to do as a Board, if you get to that place, is concur you don't need a site walk on that project.

Mr. Whalen asked where the PB was in the process for that application.

It was agreed that there had been an initial hearing and that the PB wanted a site walk; that a public hearing has not been scheduled.

Mr. Feldman said that, if the PB agreed that they didn't need the site walk, we would schedule the public hearing for the next available opportunity.

Mr. Lentz said that, if he remembers correctly, the reason we wanted the site walk was because there was a question on one of the boundaries – that it was very close to the wetland; at least that was his reason for the site walk; that he also pointed out that Mr. Sylvester had sent a letter in since then that he had a soils scientist in there to evaluate, which kind of answered the question that he was looking for.

Ms. Lemire said that there was also a question and discussion about Note #12, open space.

Ms. Bennett agreed, saying that on the prior approval there was a note on the signed plan that said – and this is the area of the property that is proposed for this storage; that Note #12 says, "Open space shall be open space park area for picnic tables and foot travel." She added that that was another reason to inspect the property.

Mr. Bouchard said that we have never discussed business on an application without a representative being here and that's what we're doing right now.

Mr. Feldman said that the applicant understood that this was going to be on tonight for the direct purpose of determining the site walk.

Mr. Bouchard agreed but said that we are rolling into the application and we cannot do that.

Mr. Feldman agreed.

Mr. Bouchard also said that he believes he was absent from that meeting, he doesn't have a package on this, and he has no information on this application at all – just for the Board and for the record - so he will also need to be brought up to speed.

Mr. Whalen said that he was also absent and doesn't have a packet; that his knowledge of this application is attached to the letter, only; that he doesn't know that there's anything to prevent us from rescheduling a site visit, asking what would preclude us from not following through with that, regardless of when the public hearing is scheduled. He added that, if there is consensus on that, why would we not try to

change your mind on a site walk, you can do that; that he will try to see where this application is in the process and whether or not it needs to be scheduled for public hearing.

ITEM 7 – DISCUSS STATUS OF OUTSTANDING ACTION ITEMS

Mr. Whalen asked about the status of the by-laws.

Ms. Bennett said that we have received the new revisions but have not considered them, yet.

Mr. Ciesleszko asked for a history of the work on the by-laws.

The by-laws will be put on the January 2 agenda.

Ms. Bennett said that she had brought up discussing some kind of format by which we could facilitate the 'findings of fact'; that she had reviewed how Kittery handles these as far as incorporating...the Planning Assistant was doing a checklist and if we could have that incorporated into the minutes, or something like that. She added that she sent that to the Planning Assistant and it got distributed at some point.

Mr. Feldman said that he doesn't know where Kittery is going; that he understands that they are re-evaluating their planning department, as they have lost both of their folks, there, and they are going to be changing that process. He added that he had developed for another town what he calls a process within a process, which really walks someone through how they deal with an application within the bigger PB process, and he could provide the Board with that. He said that the Town Manager has re-designed this position, as well, and he believes gotten authorization from the SB; that he has helped with advertising to get it to the proper professional location, so, it's on the street and that process will also be moving forward on hiring the permanent professional planner.

Ms. Bennett said that she believes we have still not completed review of the growth permits this year; that we got back all the reports from department heads but we did not have the requisite conversation about that.


Mr. Lentz said that we will do that as a group.

Ms. Bennett discussed Ms. Lemire working on Notice of Decision Letters, working from most current them backwards, to catch them up; that Ms. Bennett said that there are still three Notices outstanding from 2016. She also discussed her concern for certain 'facts', such as noticed ads for public hearings that did not happen, that have been included in previous Notice of Decision Letters; that she recognized that it was said not to go back in time revising Notice of Decision Letters but she thinks it needs to be noted.

Mr. Lentz said that he thought we would wait on that one; that there is a team the Town Manager has working on it and he reported about that at the last SB meeting; that until

ITEM 10 – ADJOURN

There was a motion and a second to adjourn the meeting at 8:23 PM.


Dennis Lentz, Chair
Date approved: 1/16/2018

Respectfully submitted,

Ellen Lemire, Recording Secretary