

**Town of Boscawen  
PLANNING BOARD  
Boscawen Municipal Complex  
FINAL MEETING MINUTES  
Tuesday, October 26, 2021**

**Present:** Mark Varney—Chair; Barbara Randall; Gary Tillman; Roberta Witham; Loren Martin; Lorrie Carey —Ex-Officio, Rhoda H. Hardy—Alternate

**Excused:** Fred Reagan—Vice Chair; Crystal Tuttle—Recording Secretary; Kearsten O’Brien—Deputy Planning & Community Development Director

**Staff Present:** Kellee Jo Easler—Planning & Community Development Director; Alan Hardy—Town Administrator; Dean Hollins—Public Works Director

---

Chair Mark Varney opened the public meeting at 6:00 p.m. Planning and Community Development Director Easler completed roll call.

Chair Varney said that this meeting is a special meeting because there were concerns regarding the last meeting. Planning and Community Development Director Kellee Easler said that she spoke with Town Counsel because she had questions regarding the conditions set forth for the applicant. She provided the Planning Board with Counsel’s response stating the Planning Board cannot require the Town to pay for the engineer review. The NH Supreme Court has explained “the planning board has only those powers granted to it; it cannot usurp powers belonging to another town body...” *Neville v. Highfields Farm, Inc.*, 144 N.H. 419, 423 (1999); *see also Ehrenberg v. Concord*, 120 N.H. 656 (1980). Requiring that the Town pay for the review is usurping the authority of the DPW and Select Board. PB does not have statutory authority to order a nonparty to pay for certain fees (RSA 676:4,6(g)). Chair Varney said the simple test for it is if it wasn’t for this development, would the town residents be paying for it? If that answer is no then the developer needs to be paying for it. If without that development and the Town was looking for something to be done then it would be fair for the residents to pay. Mrs. Loren Martin said that we, as a board, made a decision and the next day staff met about it and changed the Planning Board’s decision which they do not have the authority to change and notified the developer of it. Mr. Gary Tillman agreed with Mrs. Martin. PCD Director Easler stated that she did not make a decision on behalf of the Planning Board that is why they were having meeting tonight to make a decision. Counsel advised PCD Director Easler to see if the developer would pay for the fees for engineering before the next Planning Board meeting, then the requirement that the Town pay may be moot. Mr. Tillman and Mrs. Martin believed that they should have been notified before the developer. Chair Varney said he disagrees because staff’s purpose in life is to make sure the Town is doing things correctly. He said what PCD Director Easler has done was to make sure what the Planning Board had done was legal.

Mr. Tillman said that is not the issue. The issue is talking to the applicant before the Planning Board is his issue. Chair Varney said PCD Director Easler was advised by Counsel to ask the applicant and inform him of the law. PCD Director said that she had spoken to Counsel over the

phone and they said they would put the recommendation in writing. Chair Varney said the Planning Board does not have the authority to make the residents of the Town to pay a fee they do not incur. Mrs. Martin said it is frustrating that there was a question about it after the fact and that it should have been addressed before the decision was made. Chair Varney said he agrees with her but it is a learning point. Based on Counsel's documentation Planning Board does not have the authority to have the Town pay for the fees. Chair Varney said the Planning Board's decision, whether it is this case or any other case, if they make an illegal decision that they find out after the fact then it has to be reversed within 30 days or else they could end up in litigation. Mrs. Martin said this is a system that was already connected to sewer and that is why she felt strongly at the last meeting when they had the discussion to ask for the fee to be waived to pay for the Town's engineer to review the sewer hookup that a member of staff required. Mrs. Martin said that she is more than happy to withdraw her motion to waive the engineering fee but she would also make a motion to accept the plan without it going for engineering review. Public Works Director Dean Hollins said the reason why he asked for the engineer to review his plan is because the original mobile home park was put in years ago. The developer has put in new utilities in and there is no sewer to tie into. The only sewer that is there is a stub to tie into because he took all the old sewer out. That is why he requested for the engineer review to make sure what he is putting in is going to handle what is going into the basin.

Mrs. Martin asked if PWD Hollins reviewed the sewer plans. PWD Hollins said he did review the plan but he is not an engineer. He said any other time a developer has come in with the exception of a single family home and was connecting to sewer they were required to have Underwood look at the plans. PCD Director Easler said that she has notes from when they did the site walk with Mr. Caron and PWD Hollins told him before any application was submitted that there would need to be a review by Town Engineers for the sewer. Ex-Officio Carey asked before the old system was pulled out was the last work done on the system around 2004-2006? PWD Hollins said correct. Town Administrator Hardy said he would like to speak on the behalf of his belief at the time that PWD Hollins wanted something reviewed that was already the Town's but because it involves the applicant that is where the process takes over. There is not a standing budget for engineering review. If that is something the Planning Board would like to have in the future, that's a budget that needs to be built. Chair Varney said his fear of adding a budget line for engineering review opens up a broad box for anyone to use that for review and where does that funding stop. Mrs. Barbara Randall said that is also additional money from tax payers.

Mrs. Martin asked PCD Director Easler to clarify where in the Land Development Regulations it stated the applicant shall pay for Town Engineer's review. PCD Director Easler said it refers to Public Improvements 3.9 page 22 and then 7.2 page 37 also talked about the Town Engineer. PCD Director Easler said going forward to help the applicant see if engineer reviews are required, is to send the question to the Public Works Director, Police Chief, and Fire Chief for a letter to submit with their application. TA Hardy said this is another opportunity to help refine the process and make it better. Ex-Officio Carey said the second issue Mrs. Martin raised was the issue of notifying the Planning Board and she is wondering if, especially in a compressed time line like this if, maybe if the information from Counsel can be portrayed in an email to the

Planning Board. Mr. Tillman said that it would be nice to have PCD Director's email to Counsel. PCD Director said there was not an email that went to Counsel; it was a phone call because once it is in an email it can be brought into litigation. Mr. Tillman said that Counsel did not say when to go to the applicant to ask for payment. PCD Director Easler said that Counsel told her to explain to the applicant the legal aspect and see if he would pay. If it was done the within the 30 days, the issue would be moot and no public hearing would be required. Mrs. Randall said if should this happen again and there are questions regarding the application, the Planning Board should continue the meeting and move the application to a date certain. Chair Varney said moving forward that if staff receives information from town counsel and that if members have questions, they should direct them to the Chair of the Planning Board.

**Mr. Tillman made a motion to rescind the motion to have the Town pay the engineering fees. Seconded by Mrs. Randall. Mrs. Martin opposed. Motion passes by a 5-1 vote.**

**Mr. Tillman motioned to adjourn. Seconded by Ex-Officio Carey. All in favor. None opposed.**

**Next meeting is November 2, 2021**

*Respectfully Submitted by Kearsten O'Brien*