



TOWN OF HUDSON

Planning Board



Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison

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HUDSON PLANNING BOARD MEETING MINUTES August 25, 2010

I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:06 p.m. on Wednesday, August 25, 2010, in the Community Development meeting room in the Hudson Town Hall basement.

II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Selectman Massey to lead the assembly in pledging allegiance to the Flag of the United States of America.

III. ROLL CALL

Chairman Russo asked Ms. Quinlan to serve as Acting Secretary and to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

Members

Present: James Barnes, George Hall, Suellen Quinlan, Vincent Russo, and Richard Maddox (Selectmen's Representative).

Members

Absent: Tim Malley (excused) and Ed van der Veen (excused).

Alternates

Present: Stuart Schneiderman and Ken Massey (Selectmen's Representative Alternate).

Alternates

Absent: None. (All present.)

Staff

Present: Town Planner John Cashell.

Recorder: J. Bradford Seabury.

IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS

Chairman Russo seated Mr. Schneiderman in place of the absent Mr. Malley.

He then announced that correspondence would be taken up at the end of the meeting, saying he would proceed directly to **Old Business** Item X.A.

X. OLD BUSINESS/PUBLIC HEARINGS

A. Parkland Terrace II SP# 03-10

Map 160/Lot 104
Windham Road

Purpose of plan: To construct eight multi-family residential units with associated parking. Hearing. Deferred Date Specific from the 07-28-10 Planning Board Meeting.

Chairman Russo read aloud the published notice, as repeated above.

Selectman Maddox recused himself; Chairman Russo seated Selectman Massey in Selectman Maddox's place.

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette, Engineering Associates, LLC, appearing before the Board as the engineering representative of the applicant, said he had made his presentation at the last meeting and it was now before the Board.

Mr. Brian Wolfe, 66 Windham Road, said he was opposed, as the existing units were not up to spec; he said there would be 63 trash receptacles at 5-foot intervals, including trash, recycle, and mixed. He said there was a child in one of the units, noting that the proponents had said there were no children; he concluded by stating that a playground had not been built.

Mr. Richard Maddox, 23 Fox Drive, said this was another example of no good deed going unpunished, saying the Board had been sold on there being a great need for rental property in the town, but the units had then been turned into condominiums before the ink was dry on the contract. He expressed a hope that the Board would look long and hard at this requested expansion.

Mr. Ray Bollanger, 60 Windham Road, said Mr. Sousa had told him that the dumpster pads had been fenced in, so he was in error by saying they had not been. He said there were supposed to be dumpsters, not trash bins, but he then added that some of the tenants were not using them. He said two buildings of three units would be more conforming than what was planned, perhaps taking out the playground so that they could be all together. He said he understood from Mr. Maynard's previous

comments last month that the sewerage was done differently, but he had concerns about the future. He said he felt the proposal needed to be smaller. He then concluded by confirming, when asked by Ms. Quinlan, that no playground had ever been built.

Mr. Maynard said the playground was still scheduled to be built but had been deferred to this phase—adding that Phase I was not yet entirely complete. He noted that there had been discussion of rentals versus condos in the minutes, saying he had stated that it would be “rentals for now”—adding that he had made sure to let the Board know that it might be turned into condos, and that Town Planner Cashell had also stated that this was likely in some of his memorandums. He said that the units had not been turned into condominiums in an instant, noting that the previous applicant had gone along for a year or two and that Mr. Sousa had bought the development after the project was “sort of stalled,” adding that it was “neither here nor there” that Mr. Sousa had decided to build condos under the RSAs and/or the regulations. He said he would think that Board members and the neighbors would prefer condos, as they were of higher value and would be owner-occupied, which preserved value much longer. He said there was nothing he could do about the number of receptacles, as everyone living in the town in owner-occupied units had the right for trash pickup by ordinance, and it seemed to be working okay. He said zoning probably allowed 27 units to be constructed on this property, but it was the sewer allocation process that only allowed 21. He said it was a reasonably attractive site, with vegetation to the rear obscuring the highway, saying the development had been well received, with two thirds of the units occupied, but one of the buildings was pending final approval by the Attorney General’s office, so it could not be occupied as yet.

Selectman Massey noted that Mr. Maynard had said the playground was deferred to Phase 2; he contended that there was no such thing as Phase 2, as no further units had been contemplated. He said the owner was obligated to build the playground now.

Mr. Maynard said Phase 1 was not finished yet, saying the playground was part of the obligation of the original approval and that the playground would be done when Phase 1 was finished. He said time periods were neither here nor there, saying there had been delays because of the economy. He said he had read the minutes of the original hearings, noting there had been discussion about why the units were all crowded to one side of the property—saying he had told one of the Board members at the time that the reason had been that the remaining space was for future development, but this statement had not made it into the minutes. He said the fact that they had chosen to do 13 at the time should not matter.

Chairman Russo asked if there were any further comments coming from the public, either in favor or opposition. None being brought forward, he declared the matter before the Board and asked for comments from the Board.

Ms. Quinlan asked how many units were originally proposed and how many more were going to be built. Mr. Maynard said they had been approved for 13 units, as originally approved, confirming that he wanted to add eight more.

Selectman Massey said he distinctly remembered that there had been an area for a dumpster on the original plan, as it had been going to be private pickup, but he saw

nothing on this plan. Since this was a private development, he asked, why did the Town do trash pickup? Mr. Maynard said that was a question for the Board of Selectmen, saying he understood from the Road Agent that owner-occupied units got Town pickup.

Selectman Massey referenced the minutes of the February 12, 2003, saying Mr. Maynard was quoted as saying that two units had been removed because of wetland issues; he then asked why Mr. Maynard felt he could now add eight more units in the same area. Mr. Maynard said the wetlands issue had to do with buildable area, saying calculations at that time had used the buildable area and sewer allocation methods used at that time, but the Board of Selectmen subsequently had amended the sewer allocation procedure, which allowed the additional units. Selectman Massey asked for clarification on how the Selectmen had done this. Mr. Maynard said he was not familiar with it, but he then said business properties at one time were calculated by a residential location but now were calculated by a business sewer calculation, which was slightly higher. Selectman Massey asked Town Planner Cashell if he were correct in believing that the residential calculations should be used, since this was a residential use and not a business. Mr. Cashell said that was correct.

Ms. Quinlan said she had walked the site as a member of the Conservation Commission, adding that there were significant concerns, as there was a significant ditch running along Route 111, draining into Brook Pond and the Bensons-area wetlands. She said there was no mechanism in the ordinances to invoke a requirement for the Conservation Commission to do a site walk and present an analysis for the new use, but there should be. She said the Conservation Commission had discussed this while she was on vacation in Maine, adding that the Conservation Commission was concerned about this site and the way that its drainage went—adding that its concern also pertained to a significant buffer pertaining to the drainage ditch, as well as the buildable area. She expressed a belief that there had been concern about pylons being put in the buffer area to hold decks.

Mr. Maynard contended that Ms. Quinlan was talking about the Lennie Vigeant site further down the road, saying there were no wetlands along the highway at this site, and that the wetlands were to the left and well away. Ms. Quinlan contended that there were wetlands on this site, and the Conservation Commission was concerned because they had not had an opportunity to look at the proposed expansion; Mr. Maynard declared this was not so and that she had the wrong site. Ms. Quinlan quoted from the minutes, saying she stood firm. Mr. Maynard said he was well over 100 feet from any wetlands.

Mr. Barnes said he had not had a chance to review the five sets of minutes in detail, but he had noted that a third driveway entrance had been removed from the plan, with the original 15-unit proposal having been reduced to 13. He said it appeared that the Board had wanted to minimize the impact, but the new proposal was for more than the original, adding that he was very uncomfortable with this.

Selectman Massey expressed concern that the original approval was for apartments with private-pickup, not public pickup, with two locations having been planned. He said he was not certain how the Board would have acted back then if it had known that there

would be curbside pickup of 26 trash barrels plus recycle bins lined up on the narrow road, and now with additional units being proposed. He expressed concern about the safety issue of having the trash pickup truck operate and making that many stops in this 1300 feet of space, and he expressed a hope that the other members of the Board might have some thoughts on that.

Ms. Quinlan noted that she had been seated on the Board at that time, saying that trash pickup had been a determining factor, with the Board having allowed the plan to go through because private pickup of trash was proposed. She said that Selectman Charbonneau had been expressly concerned about public trash pickup at that time, and the abutters were now concerned. She said the site looked okay from Route 111 but looked a bit ratty from Old Windham Road, as the abutters had said; she expressed a belief that the residents in the nearby residences had a right to look at attractive properties, and that further development would further aggravate the problem, adding that this was not what had been sold to the Board in the first place, and she felt the Board needed to seriously consider whether to allow this expansion. If more was to be added, she said, a new application should be provided, not a request to expand from what had been approved. She then expressed a fear that this would create a slum.

Mr. Maynard said he wanted to express strong objection to Ms. Quinlan's remarks about this project being ratty and to her exaggerations. He said discriminating against this project when all other condominium projects had public pickup was not right and it should not be treated differently under the RSAs. He said the type of ownership should not be considered by this Board, which had to review the request before the Board. He said every property owner had a right to expand their property and come back for a full review, as he was doing. He said all ordinances were met, saying it was ridiculous to call this a slum. as it was owner-occupied buildings.

Town Planner Cashell said this project had been submitted to the Zoning Administrator for a zoning determination, and the Zoning Administrator had said this was an allowed use in that zoning district. He said much of the feeling had to do with the Vigeant case, noting that Mr. Vigeant had appealed the Town's earlier decision. He said this applicant was proposing to expand within the buildable area on an existing lot. As a planner, he said, the zoning provided for it, and the sole reason the owner was coming in was because of the Vigeant case, which said he could accommodate more than what the Town had allowed. He then expressed concern about possible litigation if the Board denied this request.

Ms. Quinlan expressed concern about possible litigation if the Board denied this request. Ms. Quinlan said her concern was that, in light of the history, she felt the Board should defer this and seek legal counsel, noting that the abutters had come before the Board each time with valid concerns, and the Board needed to consider whether this expansion was within the best interests of the Town. She noted that Mr. Maynard was saying the Board could not discriminate with respect to ownership, stating that she had lived in condominiums, with some of them being rented out. She said it would be difficult for the Board to say this was not rental property, however, so the Town would have to pick up the trash, saying it would be hard to determine whether the owners occupied the units. She said this was not a minor expansion, saying she was

not ready to go forward—adding that her fellow members of the Conservation Commission often cried out to have things come back to them.

Selectman Massey said there were several issues, saying there was definite angst shown on the part of the Board in the minutes of past meetings pertaining to the original plan, with special concern about the numbers of children, safety, etc. He referenced the 12-11-02 discussion about the trash issue, saying he was not hearing anything tonight that gave him a great deal of comfort that those issues would disappear with eight more units being put in.

Mr. Maynard rose to speak. Mr. Schneiderman noted that this matter was before the Board. Chairman Russo agreed, but said there was no voting in place at this time. Mr. Maynard said the Board could not discriminate on the basis of children, saying the developer had compromised by offering to build 2-bedroom units.

Ms. Quinlan said she wanted to clarify for the record that this Board was not discriminating either against rentals or privately owned property, but this Board ought to be able to inquire about the ownership, as it affected the Town's tax dollars, including trash pickup, driveway maintenance, etc. She said the Board was an arm of government that had to consider all these things, and it needed to know how these units were going to be utilized. She said the issue with respect to children was not a matter of discrimination but an issue because this development abutted a major State highway with very little adjoining property, so there would not be proper space for the children that would be residing there to play, and the concern was because the applicant, either this one or the preceding one, had not provided a promised area for the children on play on. She said she felt it would not be prudent or responsible for the board to say this was okay. She said the Board had to look at this as a total project.

Mr. Maynard said there were no children at this project, as he had previously stated, and the playground would be built.

Mr. Brian Wolfe, 66 Windham Road, said there was a child in one of the units. Noting that he was in the construction business, he declared that it did not take seven years to build a playground. He asked where the 63 trash/recycle receptacles would go, saying there was no place to put them in the winter.

Selectman Massey said none of his comments had had anything to with whether there should be children in the development, but there had been issues of safety back to 2002 as to how big this project would be, with concerns for the very issues that Ms. Quinlan had raised, as this was a very narrow property abutting the Route 111 highway. He said there had been issues about safety and trash, and changing the original plan from private trash pickup to public pickup fundamentally changed the Board's evaluation, saying there would have been different conversation back then if public trash pickup had been anticipated.

Mr. Maynard said the Vigeant case had a strong bearing, saying the Board had an obligation to allow this use. He said the Planning Board chairman of that time had expressed a preference for condominiums, so the development had ended up doing what the Board had wanted.

Town Planner Cashell said there were a number of issues here, noting that the Board had believed it was dealing with apartments, and he thought it would be prudent to seek legal counsel.

Ms. Quinlan then moved to defer the plan to a date specific, to be able to have the Board confer with Town Counsel as to its procedure. Town Planner Cashell suggested the date of September 22nd. Selectman Massey expressed a preference for the first meeting in October, as he could not be present for the September 22nd meeting, unless the applicant would be willing to be heard with only six members sitting.

Town Planner Cashell said October 6th would be more appropriate, because of the Law Lecture Series. Ms. Quinlan changed the date to October 6th; Selectman Massey seconded the motion, making it a friendly amendment.

Ms. Quinlan expressed a hope that the Vigeant matter did not mean that the Board members had to have this rammed down their throats, saying she felt the Board had been threatened. She said statements had been made to the Board by the original builder, and promises had not been fulfilled.

Chairman Russo noted that he had not heard anything about talking with Road Agent Burns to see about trash pickup options, saying that could be done at any time.

Town Planner Cashell said there would have to be another motion to have the applicant come back. Mr. Maynard asked if they could be heard at the same meeting. Selectman Massey demurred, saying the case was being deferred to October 6th but the Board could talk to Legal Counsel at any time.

Ms. Quinlan said the trash pickup situation was even more of a concern, saying the project was too dense as it was, and she asked the Board to really reflect on the proposals that had been made, saying it had turned into an incredible burden for the Town and for the abutters, and adding that she apologized for that.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (6-0).

**B. Fairview Nursing Home (Expansion)
SP# 04-10**

**Map 216/Lots 1 & 2
203/205 Lowell Road**

***Purpose of plan:* To construct an expansion to the existing Fairview Nursing Home facility to include 31 additional beds, and a new facility (23,000 square foot footprint). The proposed new facility will consist of a three-story building, which will include 73-units of assisted living and ancillary facility space. Hearing. Deferred Date Specific from the July 28, 2010 Planning Board Meeting.**

Chairman Russo read aloud the published notice, as repeated above, noting there had been a request to defer.

Selectman Massey moved to defer action on this matter to the meeting of November 10th, per the applicant's request. Mr. Barnes seconded the motion.

Mr. Barnes asked if there were anything that would change the traffic study. Town Planner Cashell indicated the negative.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (6-0).

V. MINUTES OF PREVIOUS MEETING(S)

No minutes were addressed this evening.

VI. CASES REQUESTED FOR DEFERRAL

No cases had been requested for deferral for this meeting.

VII. CORRESPONDENCE

A. Benson Park Committee, in accordance with §334-35.A.(4) of the Zoning Ordinance, requests to install five pedestrian bridges within Benson Park.

Presentation by Richard Empey and Eagle Scout nominee, Steve Lichtenberg.

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell noted that Conservation Commission chairman Tim Quinn was present, with an Eagle Scout candidate and the latter's father.

Mr. Richard Empey, chairman of the Benson Committee's Paths and Trails Subcommittee, affixed a plan on the meeting-room wall and noted that approximately 3-1/2 miles of trail had been built, saying that the Committee had determined that the best procedure for crossing five wetlands would be bridges, so that visitors would not trample through the wetland areas.

Mr. Hall suggested having Town Planner Cashell explain what was being proposed.

Town Planner Cashell referenced HTC §334-35 A (4), saying the Planning Board was required to weigh in on these types of projects and consequential wetland impacts. He said the Benson Committee, working with the Eagle Scout candidate, was proposing to build the five bridges. He referenced his staff report, saying he was recommending a favorable recommendation tot the Board of Selectmen.

Mr. Tim Quinn, chairman of the Conservation Commission, said the Eagle Scout project affected only one of the five locations. Ms. Quinlan said the other four would be built by the Benson's Committee, funded by the Conservation Commission. She said the impacts would be minimum and would protect and preserve the wetlands from intrusion. She commented that a budget had to be developed for the Benson Committee.

Chairman Russo asked if this proposal had to go before the ZBA. Selectman Massey said municipal government was exempt from its own zoning.

Mr. Hall said it sounded as if everyone were confused, as there was no need for the Planning Board to discuss it if the Board of Selectmen was going to allow it. He said the procedure normally was to review it and to make a recommendation to the Zoning Board of Adjustment. Town Planner Cashell said this was different because it was trail-building, and the recommendation was desired because there were budgetary issues. He then asked if Ms. Quinlan wished to amend the draft motion.

Selectman Massey said the Zoning Ordinance, in Paragraph HTC §334-35, said this was one of the uses that could be permitted by the Planning Board, the Board of Selectmen, and the Zoning Administrators, which was why it was not going to go before the Zoning Board of Adjustment. Mr. Hall said he was now less confused.

Mr. Barnes said it would be funded by the Benson's Committee, saying the committee would not be looking to the Conservation Commission for funding.

Mr. Quinn said there had been two site walks, which had been done ahead of time, saying everything Town Planner Cashell had put together had been reviewed by the Conservation Commission.

Mr. Empey said none of the structures would impact any abutters, adding that there were no noise concerns or other issues, and the only intent was to preserve the wetlands. He said he had intended to go before the Zoning Board of Adjustment but the Town Attorney had come up with the procedure now being used.

Chairman Russo asked if the proposed bridge structures had been approved by an engineer. Mr. Empey said the bridges had been over-designed and far exceeded what would be used for a house structure. Ms. Quinlan noted that the Town Engineer would oversee the construction.

Mr. Steve Lichtenberg, the Eagle Scout candidate, said he would be building a bridge 15 feet long by 32 inches wide, using pressure-treated lumber. He noted that he would also be doing fund-raising to pay for the tools and materials, with a pancake breakfast event on October 10th at St. Catherine's Church.

Ms. Quinlan moved to favorably recommend to the Board of Selectmen on the proposed construction of the five pedestrian bridges within Benson Park, as depicted on the exhibit plans and construction diagrams, as submitted to the Planning Board by the Benson Park Committee and Steven Lichtenberg, Eagle Scout Nominee, and Richard Empey, representative of Benson Park Committee—noting that this recommendation was being made knowing that the responsible parties would construct each bridge using best management practices relative to protecting the impacted

wetland environment. She then added that the Planning Board wanted to take this opportunity to recognize Eagle Scout Nominee Steven Lichtenberg on this outstanding Eagle Scout project and to wish him all the best in seeing it through to fruition.

Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor except for Selectman Massey who abstained, and Chairman Russo declared the motion to have carried unanimously (5–0–1).

Selectman Massey clarified that he had abstained because he would be sitting on the Board of Selectmen when this matter came before that organization.

Mr. Empey expressed thanks to everyone.

VIII. PERFORMANCE SURETIES

No **Performance Sureties** items were addressed this evening.

IX. ZBA INPUT ONLY

No **ZBA Input Only** items were addressed this evening.

XI. DESIGN REVIEW PHASE

No **Design Review Phase** items were addressed this evening.

XII. NEW BUSINESS/PUBLIC HEARINGS

No **New Business** items were addressed this evening.

XIII. CONCEPTUAL REVIEW ONLY

No **Conceptual Review Only** items were addressed this evening.

XIV. OTHER BUSINESS

Chairman Russo noted that there would be three Law Lectures in October. He then asked that interested members sign up. Town Planner Cashell stated that Mr. Schneiderman, Mr. van der Veen, and Mr. Malley had indicated they would be going. Mr. Russo and Ms. Quinlan said they also would be attending.

Town Planner Cashell said the next Board meeting would be on September 8th.

Selectman Massey asked if there would be a meeting with the Conservation Commission relative to the Prime Wetlands prior to making a decision as to whether to forward it to the warrant. Town Planner Cashell said the Conservation Commission was contemplating possibly amending the number of prime wetland areas and might forego inclusion of ponds having existing houses along their shores. He said the Conservation Commission would let him know when it was ready to move forward. He then outlined some of the upcoming cases, asking if the Board wanted to cancel the October meetings in order to attend Law Lecture series.

Ms. Quinlan moved to cancel the October 13th and 27th meetings in order to permit members of the Planning Board to attend the Law Lecture series. Mr. Barnes seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (6-0).

XV. ADJOURNMENT

All scheduled items having been addressed, Mr. Barnes moved to adjourn; Mr. Hall seconded the motion.

VOTE: Chairman Russo called for a verbal vote on the motion. All members voted in favor.

Chairman Russo then declared the meeting to be adjourned at 8:32 p.m.

Date: May 9, 2010

Vincent Russo, Chairman

J. Bradford Seabury, Recorder

Suellen Quinlan, Acting Secretary

These minutes were accepted as submitted following review at the 12-01-10 Planning Board meeting.