



Town of Weare Planning Board

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Planning Board

Craig Francisco, Chairman
Frank Bolton, Vice Chair
Neal Kurk, Secretary
Keith Lacasse, Ex-Officio
Bruce Fillmore, Jr.,
John VanLoendersloot,
Alternate

PLANNING BOARD – OCTOBER 9, 2014 MEETING MINUTES

Present: Craig Francisco, Chuck Bolton, Neal Kurk, Keith Lacasse, Bruce Fillmore Jr., Code Enforcement Officer Chip Meany and Recording Secretary Wendy Stevens.

Guests: Jack Munn, Southern NH Planning Commission.

I. CALL TO ORDER

The meeting was called to order at 7:00 pm by Chairman Craig Francisco.

II. IMPACT FEES

Mr. Munn stated impact fees started around the 1920's as a constitutional right to issue zoning. Since then they have grown in use for growth management purposes. During the tax revolt of the 1970's, they passed laws that made tax increases illegal and so impact fees were created. Impact fees are based on a premise that new growth needs to bear the cost, their equal share or cost of that growth which is the legal premise of how it was incorporated into NH state statutes (RSA 674:21).

He stated he has been involved in impact fee implementation in Chester, Candia and Goffstown and assisted them in updating their school impact fee. Under state statute, impact fees can be assessed by primarily the Planning Board for a range of capital facilities. In NH, water/sewer facilities, storm drainage, municipal road ways, municipal office facilities, school facilities, municipalities' proportionate share of capital shares of a cooperative regional school district, solid waste, disposal costs, transfer stations, public libraries, recreational facilities (not including open space), safety buildings, etc. He stated the key is that the municipality must have the capital project in their CIP that they are assessing the impact fees for so it is proportional to the new growth happening in your community and there is a rational nexus between the fee and the development and their share of the cost for that facility. You have six years to use them, once you collect them and they have to be used for that facility. For example, an addition to a school building, impact fees are collected for new growth, you have to dedicate those fees to that proposed project and use those fees on that project within six years. Mr. Meany asked if we put a proposal before the CIP committee for this addition on the school, and that CIP is voted down by the citizens, can you still collect? Mr. Munn replied no, it has to be approved. He stated however it doesn't necessarily need to go to public vote, it can be implemented by the Planning Board or a budget committee or the Board of Selectmen. If the fees are not utilized, they must be returned to the people they were collected from.

Mr. Kurk asked to clarify isn't it that in Weare, you have a CIP (Capital Improvement Plan) approved by the Board of Selectmen, and then the cost of individual projects goes into a Warrant Article. If the Warrant Article is voted down it may pop up again the next year so the criteria is not whether the public votes for it, it is whether or not the Board of Selectmen place it on the ballot. It was clarified that Planning Board Warrant Articles do not need the approval from the Board of Selectmen however they can choose to recommend or not recommend them. Mr. Kurk asked if the fee has to be allocated for the specific purpose for which it was collected, or can it be simply applied to that CIP in a general sense? Mr. Munn stated there is a report generated that based on statistics and methodology (road costs when looking at roads), a lot of different data that substantiates what the developer's fair share

within that rational nexus. All that has to be addressed, and once you come up with a fee (it has to be sustainable), then you can assess that fee on subdivisions, new building permits, etc. Mr. Kurk asked a specific developer comes in and the Planning board assesses a fee. At the time, do we have to say X dollars for the school, Y dollars for the road? Mr. Munn stated no. Within that impact fee report, the methodology looks at all of those costs and figures out the equitable share. Mr. Munn stated the impact fee is based upon the facility that is stated in the project, it is going to be different for each facility. Mr. Munn stated some towns have a lot of fees, and at the end of the day they total it, and the developer knows that and can plan for it. Some towns are a little bit more cost conscious about growth and the need for growth, and may not be charging an impact fee that is sustainable, or they may reduce it to take into account the economy or desire for growth. He summarized there are many mechanisms in the report for all of these issues.

Mr. Kurk asked at the end of the day, who bears the extra cost? The developer? The homebuyer? Mr. Kurk added we are in competition with other towns in a variety of ways and should look at how impact fees reflect on Weare positively or negatively. Mr. Munn stated typically some of the fees are only a few hundred dollars per home.

Vice Chair Bolton stated in Weare in particular, 75 – 80% of tax dollars are spent on schools. In recent times, is there any mechanism that could be directed towards school even if there is no CIP or building project? Mr. Munn stated yes, the fees need to be updated regularly because the costs vary, and plans may change. Mr. Munn restated that you can only use the fees for active capital facilities or improvements, that you cannot charge impact fees when there is not a project planned.

Mr. Kurk asked if impact fees could be charged to new residential developments to pay for capital improvements already made to schools? Mr. Munn stated some communities do do that. For example in Goffstown, they looked at all their bonds and went back and compared pay-off dates, new bond dates, etc., and yes you can go back in to recoup past costs, and you can go back to the year that you assess your impact fee. Mr. Fillmore stated we don't have any impact fees now, if we do all the work to start a program, we can't back now. Mr. Munn stated correct. Mr. Munn stated you have the ability to assess the impact fee on the developer for new residents that come into new residents what their fair share would be on bond payments. You have your existing residents pay a certain amount on the bond, and new residents pay their share, but you can't double dip. A new resident would not be responsible for past payments on the bond, only their fair share. Mr. Lacasse asked if property taxes serve the same purpose, and he thought that impact fees sound like double dipping in general. Mr. Munn stated they can't double pay on a bond and so there should be an impact fee credit for that bond, and you cannot double dip. The impact fee applies to a much wider calculation than just one bond. Mr. Munn stated impact fees are not going to solve your problem of building new facilities, they may help pay interest on your bond, or help pay for some road improvements. He added in Goffstown they collected enough fees to almost build their pre-k school, and it was during a high growth time with many building permits. Mr. Kurk asked have communities that adopted impact fees revoked them? Mr. Munn stated yes, sometimes if they don't have any CIP projects they do away with the impact fee. Mr. Kurk asked if towns found the administrative costs too high and that being the reason they did away with impact fees? Mr. Munn stated yes, in Londonderry, they lost their town manager and town planner because the impact fees were not tracked properly, and they repealed their impact fee ordinance.

Chairman Francisco asked if impact fees can be applied to state roads? Mr. Munn stated Mr. Preece and one other man went through a procedure to make sure impact fees can be charged on state roads, not just town roads.

A fee in lieu of, is a provision in the statutes (in lieu of the community assessing a fee on the developer for that park or that field). Mr. Munn stated DES put into place the aquatic mitigation fund so that if developers come in, and they have wetland impact and need a permit, but they don't want to mitigate on-site or offsite the net loss in the wetlands, they can pay a fee instead. DES places these monies into a fund, and they build up that fund and in-turn use to give to conservation commissions, other environmental organizations, and developers, to restore wetlands in other places in the same

watershed.

Vice Chair Bolton asked if a town adopted an impact fee (Mr. Munn stated the first step is you have to have an Impact Fee Ordinance), do we necessarily have to use it? Mr. Munn stated no. Vice Chair Bolton asked if it could be implemented only when capital projects were in place? Mr. Kurk stated then the power resides with the Planning Board to determine if impact fees are put in place or not? Mr. Munn stated yes. Mr. Meany asked if that is appealable? Mr. Munn stated he would have to ask counsel.

Mr. Munn stated if you were to pick an impact fee, he would say the road impact fee would be on to start with. The road agent comes in with ideas, the public has ideas, and in every community it is a battle what should be done. Having an impact fee for roads is beneficial because it helps if you have to bond roads, it will help pay the interest on it. Mr. Kurk stated for a few hundred dollars per house, it will take four years just to recoup costs. Mr. Munn stated yes, impact fees are based on growth and used to manage growth, and that is the concept. He added there is a lot of administrative work to keep track of impact fees, you have to keep them in a separate non-interest bearing account, you have to pay them back if you don't use them, etc. Mr. Munn stated as a final piece of advice, if it is not needed, don't do it.

Vice Chair Bolton asked if impact fees could be used to replace equipment? Mr. Munn stated yes. Mr. Munn stated he did an impact fee report about a year ago for Chester, to replace a fire truck. At the end of the day, it looked like it was a viable way to go to help pay for the costs. However, their Planning Board received his report but they did not adopt it into their CIP, and the Planning Board could not agree on how to make it work. Mr. Munn stated the finance administrator needs to be trained on how to follow the proper statutes. Mr. Munn advised if there is not really a need for it, don't do it, and that impact fees are individually tailored to an individual town's needs. Mr. Meany stated he didn't see that working with the current finance administrator and thought another part time person would be needed. Mr. Munn stated it is a line item account that needs to be administered and added to the system.

Vice Chair Bolton asked if impact fees are only charged on new developments? Mr. Munn stated yes you can charge them at the issuance of the building permit, or you can collect the fees at the time of the Certificate of Occupancy or the Board Of Selectmen can enter into an agreement with the developer at the time the fees are assessed as to how they will be collected. Mr. Meany stated one of the problems is that Certificate of Occupancies are not the best way or method to collect the fees and he thinks the impact fees should be collected up front.

Mr. Kurk asked about six years and exactions. Mr. Munn stated exactions take place as a condition of approval of the plan, and the burden is on the Planning Board that the town has receive the money or the plans for the extra turning lane has been approved by DOT, and they have provided the proper platting, and all that has to take place, and it is the responsibility of the Planning Board. Vice Chair Bolton stated we could do exactions and impact fees? Mr. Munn stated exactions are town wide. Chairman Francisco stated regarding exactions, you're talking about a large commercial project where you need changes to intersections. Chairman Francisco asked what would be the cost of implementing impact fees? Mr. Munn stated you would need an ordinance that would be part of a warrant article and the community would need to vote to give the Planning Board the authority to do that within the Zoning Ordinance. If the town votes it in, then they can look at their capital improvement program, their master plan, work with schools, chiefs, select board, and all the people that will know what big projects might be in the future. Mr. Meany asked would the Finance Committee have to agree with the CIP Committee? Mr. Munn stated yes. Chairman Francisco asked if the ordinance passed, would they then have to do a cost of services study? Mr. Munn stated no, you have to do a cost analysis as part of the impact fee development, you have to know what the improvement costs are going to be, how it is proportioned out, what every resident's share is. This is done after the ordinance has passed. Mr. Munn will provide the Zoning Ordinance language to the Planning Board. Mr. Kurk asked if inflation was taken into account? Mr. Munn stated yes you estimate inflation in your six year scenario.

Mr. Kurk summarized that say we have a school that houses 600 children, and the residents who lived in town while it was being built, have paid for the building of this school through their property taxes. NOW, the school needs to be added onto because of an increase in children, so the impact fee is introduced so that the new people moving into town are paying for the addition through impact fees, as opposed to the residents who have already paid for the original 600 children. Chairman Francisco asked how much does the fee schedule cost (assuming SNHPC does that work), and Mr. Munn stated it is part of the initial cost.

Mr. Munn stated he would provide a table of typical fees to Chairman Francisco. He said due to the Londonderry debacle, there is now an annual report that has to be filed.

Mr. Munn stated you divide your roads into traffic impact zones, and when you collect the fees they can be utilized within that impact zone, not necessarily the exact road where the development is.

Mr. Munn left the meeting at 8:14 pm.

Vice Chair Bolton thinks we should present this and let the voters vote on it. The timing of upcoming developments and the need for the ordinance was discussed, and it was noted that there is only one 5 lot subdivision this year.

Mr. Kurk stated he would like to know what the plan of the Planning Board would be for this ordinance, before asking the voters for approval. Mr. Lacasse stated there must be a need that caused this Warrant Article. Vice Chair Bolton stated he is anticipating the need, and obviously with only one 5 lot subdivision this year, there is no need presently, but at some point in time, say if a 50 lot subdivision comes before us, we should have this in place so we are not operating in hindsight. Vice Chair Bolton stated they've had years where they have had 120 building permits. Chairman Francisco stated he doesn't think the town needs an ordinance right now, he does not see a need for an impact fee. Vice Chair Bolton stated he doesn't see a need now, but allow the voters to vote. Mr. Kurk stated what if we enact this, and nothing happens for five years, but then suddenly there are 50 building permits and 120 units requested, and so we do the study and the fee is going to average \$300, and that brings the town in a grand total of \$36,000. He stated that is less than half a cent on the tax dollar. Mr. Lacasse stated it is not an efficient way to collect taxes. He stated the benefit of the money that you get vs. the administrative costs, it is complicated and costly. Vice Chair Bolton stated he thinks it should go to the voters. Chairman Francisco stated personally he doesn't think the impact fee is a good idea, agreeing with Neal's math being a good point, plus you lower the landowner's property value, you lower the developer's profits, and/or you raise the price of the house.

Mr. Kurk stated there is the argument if we don't get this impact fee, your taxes are going to go up by a half a cent.

Chairman Francisco stated he wants to contact some other towns and ask some questions, one concern being other towns who have introduced this impact fee scenario have more than one Code Enforcement Officer.

III. PROPOSED WARRANT ARTICLES

Chairman Francisco stated Nov. 20th should be our public hearing as far as Warrant Articles are concerned. They do have a Dec. 11th meeting, and the first work session in Dec the articles will have to be finalized. Chairman Francisco stated he is also hoping to discuss articles at the Oct. 23rd meeting but due to public notice, we cannot add new ideas for ordinances at the Nov. 13th meeting. Chairman Francisco suggested holding a meeting Nov. 6th instead of Nov. 13th in order to have more time to discuss ordinances. The first public hearing will be Nov. 20th and the second public hearing will be Dec. 18th. The final public hearing will be January 8th and all you can do then is change the comments. The deliberative session is the 31st of January.

DRIVEWAY SIDE SLOPES

Chairman Francisco stated on May 8th they introduced subdivision regulation revisions and they need to sign a form acknowledging the changes. Chairman Francisco stated regarding driveways, they need to either change the building codes or write a really long ordinance.

Mr. Kurk stated he has side slopes in driveways down as a question, and there is a side slope currently in place regarding roads and the same language could be adopted. Mr. Meany talked about guard rails on driveways if they cannot make the 2:1 slope. Mr. Fillmore talked about retaining walls or culverts. Mr. Kurk stated he thinks they've had enough examples where side slopes have been an issue.

WETLANDS BUFFER ORDINANCE

Chairman Francisco said he attended the Conservation Commission meeting last night and he discussed several wetlands buffer issues, and Tom Carr volunteered to be on a Subcommittee and he thinks there is wetlands buffer ordinance in Amherst that he thinks they could develop and adopt that would address the complex issues that come with classifications of wetlands. He stated he would probably start a committee in January, and be done with it by April.

Chairman Francisco stated he also discussed changing wetlands approvals from Special Exceptions through the Zoning Board to Conditional Use Permits through the Planning Board. He added Tom Carr stood up at that meeting and agreed with him.

The Town of Amherst Zoning Ordinance section 4.11 was reviewed. Chairman Francisco stated he thinks it is silly to go to the Zoning Board to get a dredge and fill. Once you have a permit to fill, the Zoning Board is not the appropriate board to be reviewing erosion sedimentation, reducing or eliminating impacts, and other engineering details. He thinks the Conservation Commission and the Planning Board are much better bodies to review these issues. He also thinks the five points of hardship, the hardship criteria could be difficult if not impossible to meet. Whereas if it is a use for a driveway inside the wetlands buffer that is not affecting the wetland buffer, you'd have to go before the Zoning Board as it stands now. It was also noted that this would require a mandatory comment from the Conservation Commission.

IV. ADJOURNMENT

Mr. Fillmore made a motion to adjourn the meeting at 9:15pm. Mr. Lacasse seconded. The meeting was adjourned.

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A true record,

Wendy J. Stevens