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3 **Stratham Planning Board Meeting Minutes**
4 **September 4, 2019**
5 **Municipal Center, Selectmen's Meeting Room**
6 10 Bunker Hill Avenue
7 Time: 7:00 PM
8

9 Members Present: David Canada, Member
10 Colin Lavery, Member
11 Robert Roseen, Member
12 Pamela Hollasch, Alternate Member
13 Tom House, Member (arrived 8:20 PM)
14

15 Members Absent: Mike Houghton, Selectmen's Representative
16 Robert Baskerville, Alternate Member
17

18 Staff Present: Tavis Austin, Town Planner
19

20 **1. Call to Order/Roll Call**
21

22 Mr. Canada took roll. Ms. Hollasch was asked to fill the vacancy of Mr. House.
23

24 **2. Review/Approval of Meeting Minutes**
25

26 a. August 21, 2019
27

28 Mr. Roseen made a motion to approve the meeting minutes of August 21, 2019 as
29 presented. Ms. Hollasch seconded the motion, which passed with a unanimous vote.
30

31 **3. Public Hearing(s):**
32

- 33 a. **Site Plan Permit.** *NHSPCA "Site Plan" Expansion* to include building additions, a
34 horse rehabilitation arena, dog play areas, with new access drives and parking located
35 at 104 Portsmouth Avenue, Stratham, NH 03885, Map 13 Lots 83, 84 & 85 submitted
36 by Jonathan Ring, Jones & Beach Engineers, Inc., P.O. Box 219, Stratham, NH
37 03885.
38

39 Jonathan Ring introduced Lisa Dennison and David Choate from SPCA, and Lucy
40 Schlaffer from ARQ Architects. Mr. Ring reviews the site plan expansion that was
41 discussed at the June 5th meeting. He describes the horse rehabilitation arena, a proposed

42 clinic for veterinarian stuff, a training center, and additional staff. He explains there will
43 be no change to the access driveway from Portsmouth Avenue. The parking is being
44 revised because of the loss of spots due to the new clinic. A new fire system will be
45 provided with sprinklers for the arena and for the facility. An elevation and aerial view
46 maps are available to the board. Since the June 5th meeting, Mr. Ring states SPCA has
47 been working on meeting the required standards for drainage. The site plan includes 4 or 5
48 bio-retention rain garden areas set through the site. Mr. Ring refers to a letter from
49 Horsley Witten Group (8/28/2019), that had comments that have been addressed and
50 SPCA is waiting for 6 comments to be finalized. Horsley Witten asked for details on horse
51 and dog waste and request it be added to the operation and maintenance manual for the
52 storm water. Mr. Ring states that they are waiting for the State Alteration of Terrain
53 permit (AoT) which has been filed and a septic system for a proposed new leach field.

54
55 Ms. Schlaffer explains the proposed vegetated roofs on the property. Ms. Schlaffer is
56 collaborating with a landscape architect and civil engineer to implement pollinator and
57 rain gardens to accommodate the storm water conditions in the member's packets. Horsley
58 Witten Group, is supportive of the approach as indicated in their (8/28/2019) letter.

59
60 Mr. Ring states they have been discussing with Fred Emmanuel, an abutter, about a right
61 of way that goes through the property that Mr. Choate, will address later.

62
63 Mr. Roseen questions parking and where the new paved areas are and how they came to
64 that conclusion.

65
66 Mr. Ring describes the new parking area is 20 spots and due to the small size of the area
67 and the bio retention gardens, a decision was made not to do porous pavement at this site.

68
69 Mr. Austin clarifies that even without the porous pavement, the storm water requirements
70 are met.

71
72 Mr. Austin references a letter from Witten Group that the board has copies of in their
73 packets (8/28/2019). Mr. Austin's interpretation of the letter is that it states porous
74 pavement has been addressed and it's up to the Board to decide if the applicant had met
75 the intent of the storm water requirements.

76
77 Mr. Austin referenced the Board packets which now contains information about the
78 easement to Mr. Emmanuel and asks Mr. Choate, from SPCA, to address it.

79
80 Mr. Canada states the letter was from Mr. Emmanuel to Mr. House—as Chair of the
81 Board-- addressing concerns about the right-of-way and stating there has not been an
82 agreement at this point. This letter can be found with the meeting minute materials.

83
84 Mr. Choate spoke about the right of way stating that there has been research since Mr.
85 Emmanuel expressed concerns at the June 5th meeting. A meeting occurred with the
86 attorney that conveyed the property to the SPCA. Mr. Emmanuel had hired Jim Vera
87 complete research on the property and they—SPCA and Mr. Emanuel—are putting
88 together a plan. Mr. Choate has been meeting with Mr. Emmanuel for about 3 weeks about
89 the easement. SPCA is waiting to hear their plan and has ordered a title search to see if

90 they reach the same conclusion. Mr. Choate makes it known that SPCA is aware if the
91 agreement with Mr. Emmanuel includes alterations to the plan, they need to come back in
92 for an amended site plan approval. SPCA's goal is to start construction in the fall and
93 begin serious construction in late spring into summer and hopefully finish by next year
94 due to the dire need of shelters. Mr. Choate explains they have a cordial negotiation, but
95 neither have enough information gathered yet. SPCA would like to move forward with the
96 plan in the meantime.

97
98 Mr. Emmanuel, an abutter to SPCA, speaks about the right of way and its importance. He
99 states it has been a right of way since the 1800s and believes that parcels of land should
100 remain connected. Mr. Emmanuel explains there are 4 obstructions in the right of way: a
101 retaining wall, driveway, a parking lot, and the proposed riding arena. Mr. Emmanuel
102 wants to relocate the right-of-way and says he will not sell his land and will not give up
103 his rights. He had the land surveyed and is expecting results from the licensed surveyor in
104 a week. The plan will define length, width, and location of right of way.

105
106 Mr. Canada reminds Mr. Emmanuel, as Mr. Austin stated earlier, that the Board action
107 will not remove his rights.

108
109 Ms. Hollasch asks for an estimate on where the right of way is located on the plan.

110
111 Mr. Emmanuel shows on the plan where the right of way is described.

112
113 Mr. Austin explains some of the Board's options with SPCA's plan. One option is
114 continuing the hearing and review of the application until such time after the right of way
115 situation is resolved. A second option, would be to resolve the cross access easement with
116 Mr. Emmanuel pursuant to the 9-4 letter without modification to the site plan as received
117 by the board this evening and recording said easement for the benefit of Mr. Emmanuel
118 against the SPCA property within 120 days of tonight. If the resolution of easement
119 requires modification to the plan, the applicant would be required to re-submit for a new
120 public hearing process to reevaluate changes to the plan as a result of the easement
121 resolution. Such a change may require additional third party engineering review if parking,
122 catch basin, or structure have to move.

123
124 Mr. Canada announces he wants to move forward with the project.

125
126 Mr. Austin addresses concerns if they move forward with building permits and SPCA
127 starts building, it becomes the abutters cost to enforce the easement.

128
129 Mr. Canada confirms with Mr. Austin that there should be a condition that the easement
130 be recorded before the Mylar is recorded.

131
132 Mr. Ring talks about the permits they are waiting to receive, the leach field, the State
133 alteration of terrain permit and explains that they don't need a NHDOT permit because it
134 is the same operation that's been there. They are not doing anything until all the approvals
135 are in and the SPCA board is not going to move forward until the issue with Mr.
136 Emmanuel is resolved.

137

138 Mr. Austin asks the board if they want to continue the review or they can add a condition
139 on the plan. Mr. Austin mentions that DOT reached out to him to ask about what is going
140 on at SPCA so something should be in writing.

141
142 Ms. Hollasch is not comfortable moving forward without first resolving the easement
143 concerns.

144
145 Mr. Austin suggest a note goes on the plan that states it will satisfy and maintain the right
146 of way.

147
148 Mr. Emmanuel strongly believes that the current plan does not address his property rights
149 of his right of way.

150
151 Mr. Roseen asks Mr. Emmanuel with conditions, that he would feel confident a resolution
152 would be required.

153
154 Mr. Lavery makes a motion to close public hearing. Mr. Canada seconds motion and it
155 passed unanimous. The public hearing closed at 7:35 PM.

156
157 Mr. Austin recommends a motion to conditionally approve the site plan as received on the
158 plans this evening, dated and received 9-4-2019.

159
160 Mr. Roseen made a motion to approve the project based on the plans as received by the
161 Planning Board on 9/4/2019 subject to the following conditions:

162
163 Conditions Precedent:

- 164 1. The applicant shall complete those comments presented in the 8/18/19 Horsley
165 Witten Group (HWG) letter, with the exception of #5 which has been addressed by
166 the Planning Board, to the satisfaction of HWG.
- 167 2. The applicant shall provide documentation from NHDOT stipulating that 1) No
168 NHDOT driveway permit is required for the project, or 2) the applicant has
169 commenced the appropriate process with NHDOT to secure necessary permits.
- 170 3. The applicant shall coordinate with the Town Assessor to confirm any changes
171 related to tax map and lot numbers, or addresses related to the project.
- 172 4. The applicant shall coordinate with the abutter, Fred Emanuel, to address the matter
173 of the access easement. Specifically, within 120 days of this action, the easement
174 matter shall be resolved upon the filing and recordation of an easement instrument
175 satisfactory to both parties that does not modify the plans as approved by the Board
176 September 04, 2019. Should the easement resolution require modifications to the
177 plan, the applicant shall submit for a modification to the approved site plan and be
178 responsible for all fees associated therewith.
- 179 5. A note shall be added to the plan stating language to the effect that: "*The cross*
180 *access easement, as presented in Mr. Emanuel's letter to the Board, as received*
181 *September 4, 2019, shall not be removed or negatively impacted by recordation of*
182 *this plan.*"
- 183 6. A note shall be added to the plan stating that the project will proceed in strict
184 accordance with the Town of Stratham Site Plan Review Regulations unless so
185 modified by Planning Board action September 04, 2019.

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Conditions Subsequent:

1. The Site Review Agreement and related Financial Guaranty, in accordance with Section VII of the Site Plan Regulations, shall be based upon the cost of the stormwater infrastructure elements, parking areas, and site access elements of the approved Site Plan.

Mr. Lavery seconded the motion which passed with following vote (4-0-0).

4. Public Meeting:

- a. **Preliminary Consultation.** *Stratham Green Condo Unit Owners Assoc. Solar.*
Proposal to install (27)0-300 watt photovoltaic modules (5)-14.4 kw inverters, Schletter mounting, AC and DC disconnect, revenue grade—ground mounted solar array at Stratham Green Condos, College Road, Stratham, NH 03885; Tax Map 17, Lot 31. Application submitted by George Horrocks, Harmony Energy Works, 10 Gale Road, Hampton, NH 03842.

Mr. Austin noted that this is the first solar case under the new solar regulations the Town adopted. Representatives from Harmony Energy Works can speak to the solar arrays. Mr. Austin explains how he receives the plan. Many Common Lands receive the same protection as conservation easements or required to be subject to such conditions by actions of the planning board. Mr. Austin goes over the history of Stratham Green Condos. The planning board was presented with a large tract of land that was presented for a future condominium development. At that time, there were 4 areas identified as convertible land where upon completion of Phase 1 the association would have the ability to vote and convert the area in phase 2 or 3 at their discretion for the construction of the residential units in that area. Mr. Austin saw on the current plan that all the convertible land has been built on and questioned how additional structures could be built on the Common Land. Mr. Austin suggested to Harmony Energy Works that in addition to the standard site plan and conditional use permit application and check list and corresponding plan sets, that the Association provide a succinct statement of the Association’s authority or representation that they have complied with their authority to create additional convertible land and then move forward. Staff needs to go back to the 1986-87 Site Plan Regulations and related Zoning Regulations to be doubly sure that even if the association has the authority to convert; specifically whether the Planning Board precluded them from doing additional development within the common land. The square footage fit, the setbacks fit, the site plan and the conditional use permit can all be satisfied to the letter of the law with the project provided the project can get over the first hurdle related to the Common Land. Another option is to reopen the Stratham Green Association in its entirety, the overall site plan, to change the parameters of the Common Land.

Mr. Canada confirms with Mr. Austin that they can supersede whatever they said back in the 1980s.

232
233 Mr. Austin goes on about staff understanding they've been sited to reduce glare to College
234 Road, they're largely invisible to abutters but of course the abutters know this will go out.
235 Mr. Austin says the height can be addressed by the applicant and states the board may
236 request a drone flight.
237
238 Mr. Roseen asks the dimension.
239
240 Sean Donovan from Harmony Energy begins to explain the plan. Sean restates the design
241 does meet the parameters, setbacks and height restrictions. The two aspects Stratham Green
242 is looking at, as opposed to the conservation land and the common and how these aren't
243 occupants and it's not an invasive project as far as the water systems go and any traffic
244 issues or septic. The things Stratham Green is trying to address are abutters and height
245 restrictions.
246
247 Mr. Roseen asks how tall they are.
248
249 Mr. Donovan answers with the back of the array is 10 ft. from the grate to the top of the back
250 of the panel. Its two modules in portrait mode. They staked out the height and put posts in at
251 each corner of the array that are still there. It's actually 9.6 from the grate to the top and the
252 leading edge will be 3 ft. off. 36 in. off the front and 9.6 off the back. The total dimension on
253 the array is 120 ft. by 60 ft. The two pieces that they are following up with in the office is
254 there civil survey that will provide the structure on the stamp drawing the second piece is
255 notifying all abutters. Including the abutters across the road. It's not a larger scale project.
256 They have designed a system to accommodate specific uses that the condo association has
257 like their pump house water, common area lighting, not addressing each individual home at
258 this point. Mr. Donovan's biggest concern is the abutters and if it is an invasive project to
259 anyone in the surrounding areas, do the solar panels have glare and are they not pleasing to
260 the eye. The Stratham Green site has a specific grade that will keep the array low and they
261 chose the two modules in portrait mode design to keep it lower. This will stay low profile
262 and of course they'll address any abutter concerns that they have.
263
264 Mr. Austin confirms with Mr. Donovan they are not notifying the abutters before submitting
265 an application.
266
267 Mr. Austin suggested that Harmony works with the association to come up with a letter
268 regarding the common land on the conversion and they submit any waivers.
269
270 Mr. Canada asks Mr. Austin what waivers he sees needed.
271
272 Mr. Austin answers that he doesn't have enough information to know and it's possible there
273 aren't any. It needs to be a complete application.
274
275 Mr. Roseen states a concern he has is the loss of habitat and one question is if the plan is to
276 fence it off entirely or would they be using the style where they can protect all the electrical
277 pieces off the back so that it can remain unfenced meaning birds can still nest.

278
279 Sean answers they are using an application that wouldn't require fencing.
280
281 Mr. Canada asks if it needs to be as close to the road as it is.
282
283 Mr. Donovan explains that they went over a few layout options. There are a few reasons they
284 went with the plan closer to the road, one reason is because there is a swale on the property
285 that can help keep the array out of site from the abutters in the condo association. The other
286 thing is the power, the power from the road, the poll for the meter is at the road.
287
288 Mr. Austin asks what NH 108/College Road traffic will see. The regulations require ground
289 mount installations to post a surety bond for the cost of construction for the entire array. For
290 the use of the panels to be discontinued and the association leaves the panels. If the site is
291 abandoned, then the town has the funds and abilities to return it to its previous state. One of
292 the requested waivers might be to not post that bond as it's essentially a residential install.
293
294 Mr. Canada asks if a lien would achieve a similar outcome where the tax payers won't have
295 to pay for the removal of the panels if they are abandoned.
296
297 Mr. Canada states that the solar panels are too close to the road.
298
299 Mr. Austin asks about how it is only 3 ft. off the ground in a place that could have 4 ft. of
300 snow.
301
302 Mr. Donovan explains that they try and find the flattest spot on the property and he doesn't
303 think it's in the line of site of the traffic and he will know for sure once the civil survey is
304 completed. They have a good buffer of trees to block the view of the panels from the
305 roadway. Mr. Donovan offers to provide pictures.
306
307 Ms. Hollasch suggests the board does a drive by of the property.
308
309 Mike Picarra, introduces himself as the Vice President of the association and he is at the
310 meeting with the president, E.C. Henderson Jr.
311
312 Mr. Henderson speaks about the location of the panels and how the spot they chose has the
313 most exposure to the sun. From a traffic standpoint, since it's the lowest spot, it provides less
314 visibility of the array.
315
316 Mr. Austin informs the board that he will be sending the public hearing notice for the Master
317 Plan October 16th. Mr. Austin received communication from Rockingham Planning
318 Commission that they have a DES Grant to provide a presentation on ground water, source
319 water protection and Stratham is both geographically relevant to their grant and subject to
320 many of topics that will be addressed during the presentation. October 28th there will be a
321 public meeting in meeting room A and B. Mr. Austin encourages any and all planning board
322 member to attend the meeting.
323

324 Ms. Hollasch asks if Mr. Austin received any news about RPC's representatives. The Select
325 Board accepted the nomination of the Planning Board and Ms. Hollasch has been appointed
326 along with Ms. Lucy Cushman as representatives of Stratham. Mr. Austin will check with
327 Town Administrator to see when letters will be sent.

328

329 Mr. Canada mentions any warrant articles that the board may want to make. It was in the
330 master plan that the board makes some adjustments to the zoning at the industrial park so
331 they can have some ancillary uses such as a coffee shop.

332

333 Mr. Austin said he has been speaking with Shanti Wolph about how at 61 Stratham Heights
334 Road they needed a couple of special exceptions for what they wanted to do with the
335 Robinson Farm and it also happened to come with enough development that it triggered site
336 plan review. Mr. Austin would like to avoid having two boards have to evaluate one project.
337 If something that otherwise qualifies as a special exception triggers site plan review then the
338 perhaps review entity becomes the Planning Board and the Planning Board has the ability to
339 grant all the requisite approvals for that project to move forward.

340

341 Mr. Canada asks if there are any other ideas on zoning.

342

343 Mr. Austin refers to the Accessory Dwelling Unit (ADU), Section 5.4. If you don't have a
344 detached garage, can you build one and convert it to an accessory dwelling unit. The
345 parameters are different for accessory structures and garage. The regulations currently say
346 that you have to leave the garage doors. Does the Board care if the garage exists before it
347 becomes an ADU or if an ADU is functionally a second single family home on a single lot.
348 Current regulations stipulate that accessory dwelling unit may be requested on those lots that
349 comply with table 4.2. That is not what the State said according to local representatives and
350 some state attorneys. Mr. Austin recommends the board considers removing the reference to
351 Table 4.2 so that any lot that can have a single family home can have an accessory dwelling
352 unit. It's misleading language according to the states original intent.

353

354 With the boards support, Mr. Austin would do something similar to what they did with solar,
355 if they don't like the way the language is written provide a red line of some suggested
356 changes.

357

358 Mr. Roseen may want to revisit the Gateway regulations and process based on the Master
359 Plan.

360

361 Mr. Austin explains the Town Administrator now requests the board completes an action
362 sheet for every meeting to be posted prior to the minutes. The action sheet would contain
363 who was there and what happened.

364

365 Mr. Roseen wants to discuss flexibility to help the significant properties along Route 33.

366

367 Mr. Canada states the Heritage Commission is working on that.

368

369 Mr. Austin explains Stratham has 2 Economic Revitalization Zones: the Flexible
370 Mixed Use District, and the Industrial Park. Mr. Austin states he is working with
371 David Moore, Town Administrator and the ERZ State ERZ representatives to renew
372 the existing ERZs on, conceptually, created a third—the Gateway District.

373

374 Mr. Roseen wants to spend some time with the board discussing the findings of the
375 108 Committee.

376

377 Mr. Laverty made a motion to adjourn at 8:44, Ms. Hollasch seconded the motion,
378 which passed with a unanimous vote.

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383 **5. Adjournment**

384

385 Note(s):

- 386 1. Materials related to the above meeting are available for review at the Municipal Center during
387 normal business hours. For more information, contact the Stratham Planning Office at 603-772-
388 7391.
- 389 2. The Planning Board reserves the right to take items out of order and to discuss and/or vote on items that
390 are not listed on the agenda.

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