

APPROVED MINUTES – APRIL 5, 2021



Town of Warner

Planning Board

DRAFT – Meeting Minutes

March 1, 2021, 7:00 PM

No physical location for this meeting; it was conducted via Zoom.

1. OPEN MEETING and ROLL CALL

At 7:00 p.m., Chairman Ben Frost called the meeting to order and made this statement: “As Chair of the Planning Board, I am recognizing that an emergency exists and I’m invoking the provisions of RSA 91-A: 2,III (b). Federal, State and local officials have determined that large gatherings people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is essential to the continued operation of the Town of Warner government and services which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location. At this time, I also welcome members of the public accessing this meeting remotely Even though this meeting is being conducted in an unusual manner and under unusual circumstances, the usual rules of conduct and decorum will apply. Please note that all votes taken during this meeting will be by roll call vote.”

ROLL CALL: Ben Frost (Chairman), 1 other in residence; Don Hall (Vice-Chairman), 2 others in residence; Clyde Carson (Board of Selectmen representative), 1 other in residence; Romeo Dubreuil, 1 in residence; Andy Bodnarik, 2 others in residence; Ben Inman, 1 other in residence; James Gaffney, alone

Absent: Diana Corriveau (alternate)

Also present: Janice Loz

2. Review of Minutes of January 21, 2021

James Gaffney said on page 2 there should be a mention of some broad conditions he proposed as guidelines for conditions that are consistent with the RSA regarding what is considered to be regional impact. Chairman Frost said he recalled this discussion. Ben said the comments were relative to the comments made to regional impact. He suggested adding the words “There were additional comments about the previously mentioned guidelines that were proposed for the Board to adopt regarding regional impact.”

It was moved by Andy Bodnarik and seconded by Clyde Carson to approve the minutes of January 21, 2021, as amended.

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Roll call vote:

Don Hall: Yes, Ben Inman: Yes, James Gaffney: Yes, Romeo Dubreuil: Yes, Andy Bodnarik: Yes, Clyde Carson: Yes, Ben Frost: Yes.

The motion passed 7-0.

3. Kierney Merger Approval

Chairman Frost said that the owner was asked to submit a new application on the new form that included the mortgagee consent. This has been done. Chairman Frost said the application was ready for signature and he would execute it later that week.

4. Comet LLC Application

The applicant has chosen to seek modification of a condition of approval that states the number of access points to the lots.

Ben Osgood said the decision issued October 16, 2000 was for a four-lot subdivision. Their new plan has been made and a lot has been changed. The rotary is now there. He would prefer that the entrance to Lots 1 and 2 (Map 35, Lots 4-1 and 4-2) be allowed. Chairman Frost asked Ben Osgood to give in writing a waiver of everything that hasn't been submitted, and the application fee. Mr. Osgood recalled that the application fee had been submitted previously. Janice said she would look into this.

Ben Inman liked the idea of the second driveway and feels it is a good thing.

Don Hall asked what the State had ruled on this. Mr. Osgood said they hadn't ruled on this yet, but agree that they are allowed to have a driveway on Lots 1, 2, and 3 (Map 35. Lots 4-1, 4-2 & 4-3. Mr. Osgood said the third entrance to Lot 3 (Map 35, Lot 4-3) is a bit steep; they do not plan to use it at this time.

Chairman Frost said that in 2000, the approved driveway to the third lot was located directly opposite of North Road. The design has been created in consultation with NHDOT.

Clyde said an email had come through from Derek Evans that day. He wonders how much this enters into the consideration of the request. Chairman Frost said he didn't think his email had bearing on this issue; it is more of a Site Plan issue.

It was moved by Andy Bodnarik and seconded by Ben Inman to accept the application for discussion.

Andy said on the east side between Evans and Lot 1 he thought there was a brook on the other end past Lot 3. Mr. Osgood said there is a catch basin on the opposite side of the road that dumps between the Evans property and theirs. There is a 24" culvert that dumps along the property line between Lots 2 and 3. There is a good-sized brook that flows through there.

Chairman Frost took a roll call vote:

Don Hall: Yes, Ben Inman: Yes, James Gaffney: Yes, Romeo Dubreuil : Yes, Andy Bodnarik: Yes, Clyde Carson: Yes, Ben Frost: Yes

The motion passed 7-0.

Public Hearing – Chairman Frost opened the public hearing on this topic.

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There were no public comments.

Chairman Frost closed the public hearing.

The question now is to determine whether to lift the requirements of the entrances, which were agreed upon in 2000. The conditions have changed substantially since that decision was made. The roundabout has changed the speed of traffic and he feels that justifies the request.

Clyde asked about the third access. Chairman Frost said that this would be taken up at the Site Plan Review. Clyde said there is just one entrance off the roundabout that accesses all of the businesses on the opposite side of the road. He felt that this idea would be helpful to have as part of this new development across the way. Clyde felt that one entrance instead of several would be less confusing to those traveling through the roundabout.

Ben Osgood said that the road into Market Basket is actually a road. There is a large parking lot there as well. James said that both McDonalds and the Liquor Store have two driveways. This is true for the gas station as well. He wasn't sure why they would treat this new development in a different way. Clyde said he is more concerned with what is coming directly off of (Route) 103 (West).

Andy suggested that their approval be held until NHDOT's approval comes in. He is concerned with the engineering having to be done on the slope for access to Lot 3.

James said he had proposed that the Planning Board accept whatever recommendation and approval NHDOT comes out with. He isn't sure that using this as a condition is necessary. He added that the third lot (Lot 4-3) isn't part of this application. Chairman Frost said as referring to the Site Plan, this is true, but the Subdivision does include Lot 3. James said statutorily, development is allowed one access per lot.

Mr. Hall said he recalled that Comet, LLC was going to NHDOT to get approval. He feels that they need to make this project doable and get it moving. If the State says they can do it, the Planning Board has no jurisdiction to say they can't.

Andy said they can say that if it is approved by NHDOT, it is fine; he isn't suggesting that they can't construct the third driveway.

Clyde thinks the State is not looking out for the best interest of the Town. He thinks the Town has to look out for itself via the Planning Board. He doesn't like to just say that they should do what the State says is ok. They have no jurisdiction on what happens off of Route 103 (West). Chairman Frost said the Planning Board in every town has the power to limit what property owners do including access points in certain instances.

It was moved by James Gaffney and seconded by Andy Bodnarik to approve the application with the condition that it take effect at such a time that the NHDOT gives their approval, to relieve condition #7 from the 2000 approval.

A roll call vote was made:

Don Hall: Yes, Ben Inman: Yes, James Gaffney: Yes, Romeo Dubreuil: Yes, Andy Bodnarik: Yes, Clyde Carson: No, Ben Frost: Yes

The motion passed 6-1.

5. Continuation of Site Plan Hearing for Comet LLC, Map 35, Lots 4-1 & 2 on Route 103

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West

Ben Osgood was there to discuss the (site) plan. He said he had submitted a revised (site) plan and copies of everything. He went through the minutes and outlined the issues that had been raised through all the hearings and how they were addressed. There were about 20 items outlined.

Maintenance of the drainage pipes – AoT has a maintenance log. It is anticipated that the lots will remain in the same ownership. If the lots are split, the owner of Lot 2 (Lot 4-2) shall be responsible for the maintenance and submit the logs on an annual basis. Chairman Frost suggested making the owner of Lot 2 responsible for the maintenance from the start.

Sidewalks – revised plan shows a crosswalk across the Evans easterly driveway.

Hydrants – locations were approved by the (Town of Warner) Fire Department.

Curbing – sloped granite curb in all locations except for the entrance which has vertical granite curb per NHDOT regulations.

Truck traffic – associated with the 15,000 cubic yards needed to fill the site. It will be about 750 truck trips. He thinks the best thing would be a condition limiting truck traffic 7am-5pm Monday - Friday and 7am-2pm on the weekends.

Snow storage and removal – All the plans have been submitted to the (NHDES) AoT about this. They will issue a condition that the snow must be plowed by a Snow Pro and salt applicator. This is in the works. James asked about this kind of certification. Chairman Frost said this doesn't need to be a condition of the Planning Board's approval. It is between the AoT and the applicant. Ben Osgood said the operator has to have taken a class about the proper amount of de-icing material used on a site; it is a State program and a certification is earned.

Fire Department access – entrances have been modified to make access easier, and they have created revised turning plans. These details will be included in the final plans.

Nuisance noise from the drive-through speakers – the speakers emit 84 decibels at 1' from the speaker. Every time the distance doubles, the sound is cut in half. At 50' away, the sound from the speakers won't be heard. There is nothing within 1,000' except from I-89 that is facing the direction of the speaker.

Parking on Lot 1 (Lot 4-1) – revised (site) plan anticipates a retail use and they meet the parking regulations under that use. A condition should be in the approval saying if there is a Change of Use, they need to come back to the Planning Board to verify that the parking requirements are met.

Lighting Plan – shows snow storage and dumpster areas.

Hazardous Materials – He isn't sure what kind of materials are the concern. There will be some cleaning products used to clean the building. Nothing more. Andy said that it had to do with chloride and fertilizer runoff that could cause algae blooms. He also thought it was storage of large quantities of hazardous materials. This could be a condition using the State's language and guidelines. Mr. Osgood said that these materials should not be stored on-site.

Signage – this is on the (site) plan and is in compliance with the sign bylaw (Town of Warner, NH site plan review regulations). He submitted a copy of a standard Dunkin pylon sign. It is internally lit, made of plastic, which he realizes doesn't meet the Town's (site plan review)

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regulations. A condition could be made to have the sign meet the Town's approval.

Water System – the water and sewer administrators have agreed that the (site) plan meets their requirements.

Access from Route 103 West – NHDOT hasn't issued the permit as of yet. They don't know what will be on Lot 3 (Lot 4-3) yet. A condition that would be good is to have an easement for water and sewer and access held by the owner of Lot 2 (Lot 4-2). In the event that Lot 3 wants access over Lot 2, they would need to get approval from the Planning Board and the NHDOT.

Connection to the (Evans) gas station adjacent to the property – Ben Osgood said that he has received notice from the owner that he isn't against this but would like to know what the usage would be. The owner at Evans said he would like to see the Dunkin up and running first and then see what comes next.

James asked if a hardware store were to move into the space he would assume that they would be able to sell fertilizer and things that would normally be sold in that kind of store. Chairman Frost said that the suggestion was that there would be no bulk storage allowed on the site for on-site use. The materials could be sold retail.

Don Hall said that Demoulas has stored open containers of rock salt in their property all winter to deal with snow and ice. This is true at the liquor store as well.

Chairman Frost noted that the use of organic fertilizers and materials have been voluntarily suggested for use by the property owner. He said that this could be a part of the condition.

The easement on the plan is meant to serve Lot 3.

Andy said the Use (regulations) Table has exceptions that are not allowed, including power plants, gas plants, water filtration plants, and sewage and refuge plants. Equipment garages are also not allowed in the Use Table. Chairman Frost asked Andy to amend the sheets to reflect the Use Table.

Andy suggested the snow storage shown on the Landscape Sheet is listed incorrectly. This would be amended by the property owner.

Andy agreed that a usage change would need to be done via the Planning Board.

Andy noted that the width of the access roads had been amended.

Andy noted that storm water prevention and ice maintenance plan sheets had a type-o in the header. Ben Osgood said that this had been fixed. Andy suggested the notes on the plan be included in the final plan. Ben Osgood said he thought they could make a PDF of the notes and include them with the plan.

Chairman Frost opened the public hearing for this topic.

Ken Milender, Warner River Local Advisory Committee, had some questions about snow removal and storage. He is concerned of the de-icing chemicals. Ken said Aries Engineering suggested that the drainage should go through the treatment system and be infiltrated. Ben Osgood said that the snow is on the flat areas, adjacent to the parking lot. Most of those areas will drain into their drainage system. He thinks that most of the snow will be stored at the back of the property as there is a lot of room back there. Ben Osgood said that the focus would be to push the snow to the back of the property where it will drain into their infiltration system.

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Ken said that they had asked that notes referring to the materials collected by their infiltration system be clarified to say “sand and debris in catch basin and drains will be disposed off off-site.” Is that something that can be added? Ben Osgood said this has been added on the last page of the O & M document. It also includes that invasive species that will be taken from the site and disposed of properly as well.

Ken asked about note #18 which says that the sand and debris in the basins should say “shall be disposed (in accordance) with NH regulations and best management practices” or something to that effect.

Nancy Martin asked that a condition should be to have the certification of those removing snow regularly shared as the property backs up vulnerable conserved property and the river behind it. Chairman Frost confirmed that this certification is required under AoT.

Derek Evans asked for clarification on the development of Lot 1. Ben Osgood said that at this time they don't have any potential occupants for the construction at Lot 1. They will put the gravel paving down, and do utilities on that site but won't do any construction until they have someone interested in using the space. Chairman Frost said they may not need to come back to the Planning Board to begin the construction depending on the use of the potential building.

Derek asked if connection to his property was a condition of the approval. Chairman Frost said it was not. Derek said he was in favor of it and if both parties can agree to do so, is it then considered a condition? Chairman Frost said if Mr. Evans would agree to the connection, the Board could it a condition of the approval.

Paul Kneeland asked Mr. Evans if it made sense to share in the customer base, would he be willing to share in the expense of the connection? Mr. Evans said he would need to think about that. Paul also asked if the Board would provide a parking waiver if some of his spots were made unavailable due to the connection. Chairman Frost said that would be up to the Board. Paul said they want to make this happen and they would like to try and get a decision that evening. He would say that if they could share in the cost of the engineering, he would come to the Board asking for an amendment for the approval.

With no further comments coming forth, the public hearing was closed.

Andy said some of the literature in the packet talks about the removal of sediment by use of sediment traps. There was some discussion of a wood chip berm. There was also a mention to concerns about a level lip spreader and controls for the wetlands. There is also discussion of the installation of swales and other positive changes that have been made.

Chairman Frost said he believed that the Board was ready to make a decision on the application.

Andy Bodnarik listed the conditions he had made note of:

Limiting the usage of pesticides and fertilizers and instead using organic compounds, that water for construction use is not be drawn from the (Warner) River, the maintenance and reporting to the AoT and the Town be overseen by the owner of Lot 2, confirm the high water line of the river (Ken Milender said the ordinary high-water mark is fine to use, but should be identified as such), deliveries of fill to the site be limited to 7am-5pm during the week, and 7am-2pm on Saturdays; no construction truck traffic on Sundays, snow removal to be performed by a certified Snow Pro applicator and a log kept as part of the AoT permit, any change of use on Lot 1 or 2 would

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require approval from the Board with regards to parking requirements, snow storage area on page 14 will be re-labeled, storage of hazardous materials shall be done in accordance with State, Federal and Local law, there should be no bulk storage of hazardous materials for on-site use, the proposed signs must be in accordance with Town regulations, approval conditional by permits issued by NHDOT and NHDES, the use of lot access by easement to Lot 3 by Lots 1 and 2.

Clyde asked if they have a correspondence on record from the (Town of Warner, NH) Water Precinct saying that they can handle this project? It was noted by Ben Osgood that this was testified at a meeting that the project would be OK. Chairman Frost said written notice from this department should be on file. They already have emails from (Town of Warner, NH) DPW and the Fire Department that say they are fine with the plans.

Chairman Frost noted the inclusion of a cross-parking easement on Lots 1 and 2 to account for the deficiency on Lot 2. Ben Osgood said he was OK to do this.

Chairman Frost noted the addition of the storm water plan as a new sheet as well as the disposal of the storm water debris following State and Federal regulations.

Chairman Frost said he would like to nail down the language that will be used between the owners of the Evans property and the properties in question. How they choose to cost-share or work together is between them; the Town cannot make any rulings on this.

Don Hall wondered why they couldn't leave this up to the discretion of the two owners to come up with a plan and reconvene with the Planning Board and review the whole thing. Chairman Frost said that is what they are doing; the Board just wants to see how the two owners can work together to move forward.

Chairman Frost summarized:

1. Organic compounds shall be used (to limit the use of pesticides and fertilizers)
2. No water is to be drawn from the Warner River during construction
3. Lot 2 is responsible for reporting to AoT and the (Warner) PB for maintenance of drainage
4. Sheet 3 should indicate what is meant by the Warner River Boundary
5. Truck traffic during construction should be allowed Monday through Friday, 7am-5pm, Saturday 7am-2pm
6. Conditions of AoT permit by the State will be incorporated by reference
7. If there is a change of use to Lot 1 or 2 it will require approval by the (Warner) PB
8. Sheet 14 corrections need to be made
9. Any storage of hazardous materials will be done in accordance with Federal, State or Local law.
10. No storage of bulk hazardous materials for on-site use permitted
11. Sign details will be presented to the Board for future approval
12. Conditions by the issuance of permits by NHDOT and DES for Alteration of Terrain. Any

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changes in plans must be brought back to the (Warner) Planning Board for approval

14. Access easement on Lots 1 and 2 on sheet 4 is for access for vehicles, pedestrians, and water and sewer.

Don Hall noted that the Town let the State take water from the Warner River while working on I-89 this summer. Why was this allowed? Chairman Frost said that was probably the State acting on behalf of the public and they are allowed to do this. He doesn't think the Town could have stopped the State from doing this.

James said he doesn't think the Town can compel the property owners to work together. He didn't think this was the will of the Planning Board to include this condition. It is up to the property owners; he didn't think the Board had to add any language that this was a condition.

Chairman Frost asked how others felt on this issue. Don agreed, as did Andy, Romeo and Ben Inman. Chairman Frost said this condition would be removed from the list of the other conditions. Mr. Kneeland said if the property owners can make it happen they will and will come back in front of the Planning Board to share their plans. It is a detailed endeavor and they will need to do traffic studies, etc. He didn't believe it should be a condition of the approval.

It was moved by Romeo Dubreuil and seconded by Don Hall to approve the application with the conditions stated above.

Clyde amended the motion to include written notification from the Precinct that they approve of the plan.

A roll call vote was taken:

Don Hall: Yes, Ben Inman: Yes, James Gaffney: Yes, Romeo Dubreuil : Yes, Andy Bodnarik: Yes, Clyde Carson: Yes, Ben Frost: Yes

The motion passed 7-0.

6. Communications

Janice had sent some messages out and Chairman Frost suggested the members of the Planning Board to check their email.

7. Chairman's Report

Chairman Frost said there were some reappointments coming up. Romeo Dubreuil and James Gaffney's terms were up that year. Janice suggested that if they would like to run again, they should let Judy know.

Clyde said the Town has submitted their letter of interest to the NHDOT for a TAP grant. This is for a sidewalk project from downtown Warner to (I-89) Exit 9.

Ben Inman said the RPC has a full commission meeting on the 31st and they will be taking the 10-year transportation program to the public. He will report on this at the next Planning Board meeting.

James asked if they could vote at the next meeting on criteria for future applications to determine whether or not they are of a regional impact. He also thought that they could allot some time at every meeting to discuss any potential zoning changes that may be coming up. This will help beat the usual end-of-year rush on these items.

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Chairman Frost asked if there was a new chair of the ZBA. Janice said it was Howard (Kirchner) for the time-being.

Chairman Frost adjourned the meeting at 9:22pm.

Respectfully submitted,

Kristy Heath, Recording Secretary

Town of Warner