

**GROTON PLANNING BOARD
JANUARY 5, 2006
MINUTES**

Chairman Clements called the meeting to order at 7:30 PM in the Town Hall
Members present: Clements, Barringer, Degen, Eliot, Lewis, and Perkins
Members absent: Wilson

SITE PLAN REVIEW – CROSSROADS PLAZA

The Board voted unanimously to continue its review of the Crossroads Plaza site plan to February 2, 2006 at 7:30 PM.

FY 2007 BUDGET REQUEST

The Board discussed the level-funded FY 2007 budget request.

The motion was made by Lewis to add \$5000 to the legal budget.

The motion was made by Degen to ask the Board of Selectmen for permission to use special legal counsel rather than Town Counsel. He said he would like the additional \$5000 to be set aside for special legal counsel when the Board needs an independent legal opinion.

Member Perkins noted that these are difficult financial times, so the Board should level fund its budget by taking funds from another line item rather than just adding funds to the legal budget. Board members agreed to decrease the engineering budget from \$7500 to \$5000 and to decrease the consulting budget from \$10,000 to \$7500.

The motion was reiterated by Lewis to request \$15,000 in legal, to decrease the engineering budget from \$7500 to \$5000, and to decrease the consulting budget from \$10,000 to \$7500, and that the budget be level-funded at \$99,312. *The motion was seconded and passed with Clements Barringer, Degen, Lewis, and Perkins in favor; Eliot abstaining.*

The motion was reiterated by Degen to send a letter to the Board of Selectmen requesting permission to hire independent legal counsel for this fiscal year and next fiscal year. *The motion was seconded.*

Other Board members stated that it would be better to make this request to the Selectmen on a case-by-case basis and explain why the Planning Board needs special legal counsel for a particular matter.

The motion was defeated with Degen in favor; Clements Barringer, Lewis, and Perkins opposed; Eliot abstaining.

TITLE FIVE PRESENTATION

Ben Cutone of the Nashoba Associated Boards of Health presented a power point slide show summarizing the provisions of Title Five. Board of Health members Robert Hanninen and Susan Horowitz were present.

WATER RESOURCE PROTECTION DISTRICTS

The Board met with the Board of Health to discuss amendments to the Water Resource Protection Districts. Mark Archambeault of the Nashua River Watershed Association was present.

The Board of Health members said they would like the Board to address nitrate loading in the Zone III and recommended that 220 gallons per day per 10,000 sq ft area be the maximum amount of wastewater unless treatment is provided.

Member Eliot said she would prefer to have more flexibility so the Board can negotiate with applicants.

Member Lewis asked if the requirements would be in the by-law or in regulations. Planning Administrator Michelle Collette said it is up to the Board, but there is more flexibility if it is in the regulations.

Planning Administrator Michelle Collette will meet with Health Agent Ben Cutone and Water Superintendent Tom Orcutt to prepare a draft of the proposed changes.

SITE PLAN REVIEW

The Board met with Town Counsel Judith Cutler to discuss possible amendments to the Site Plan Review provisions. The Board debated whether site plan review should be an administrative, by-right process or subject to a special permit.

Attorney Cutler said the advantages of the by-right process includes:

- It is a more simple, administrative process;
- The applicant or an abutter can appeal issuance/denial of a building permit to the Zoning Board of Appeals before appealing to Court.

The special permit process includes:

- An advertised public hearing and notice to abutters are required;
- Any appeal is directly to Court rather than the ZBA;
- The special permit decision must be recorded at the Registry of Deeds;
- A special permit requires a super-majority vote.

Attorney Cutler said both procedures rely on the Building Inspector to enforce the conditions under state statute (Chapter 40A, section 7). She said if the Board is not satisfied with the enforcement action, it has standing to appeal the Building Inspector's decision to the ZBA and then to Court.

Attorney Cutler cautioned the Board that site plan review is only a review procedure that has no authorization in Chapter 40A. The Town can administer site plan review through either an administrative or special permit process, but it cannot use site plan review to permit or deny a type of use.

Member Degen said he could see advantages to having the special permit recorded at the Registry of Deeds because future owners would know the conditions of approval.

Member Perkins asked what the disadvantages would be with the special permit process. Attorney Cutler said the time frame would be longer with the 14-day advertising requirements and an appeal to Court is more expensive. She suggested that the Board could continue to have Level I by-right and Level II by special permit. She said the Board's time frame is very limited in the current by-law and the Board should consider changing it.

Member Barringer said the Board is very concerned about enforcement after the site plan is approved. Attorney Cutler said the Board should write conditions that include specific benchmarks to be sure items are completed before building permits or occupancy permits are issued. In some cases, the Board may want to consider a phased construction plan. The Building Inspector must enforce the conditions of approval whether the site plan approval is by-right or special permit. She said the Board must let the Building Inspector know when it has a concern and request enforcement. If the Board is not satisfied with the enforcement action, it has 14 days to appeal to the ZBA.

Member Eliot said if a site is not in compliance, then the Board must take appropriate action.

Member Perkins asked if the Board can limit the sale of units. Attorney Cutler said, "No," it is up to the buyers to do their own research and check requirements.

Chairman Clements asked about the types of performance bonds. Attorney Cutler said no matter what type of bond, the Board does not have the right to enter private property and complete the work. She said the bond is only useful if the Board uses it as leverage to require compliance.

Member Degen asked if the Board can require a cash bond instead of an insurance bond. Attorney Cutler said, "Yes,"

because site plan review is not subject to the provisions of the Subdivision Control Law.

The Board thanked Attorney Cutler for her assistance and will deliberate the matter at its meeting on January 19, 2006.

SHAWS

The motion was made by Lewis to remind Shaw's that the stockpiles of snow in the parking lot must be removed in a timely manner as required in the Site Plan Review conditions. ***The motion was seconded and passed unanimously.***

Meeting adjourned at 10:15 PM

Respectfully submitted,

Michelle Collette
Planning Administrator