

09-02-20: These minutes are subject to possible revisions/corrections during review at a subsequent Planning Board Meeting.

**Town of Chester  
Planning Board Meeting  
Wednesday, September 2, 2020  
Virtual Meeting  
Approved Minutes**

For the duration of the COVID19 pandemic, the Planning Board will be meeting electronically under the emergency provisions of RSA 91A. <https://zoom.us/j/92697843243>, or via telephone - dial (301) 715-8592; the meeting ID is 926 9784 3243.

**Members & Staff Present:**

Brian Sullivan, Chairman  
Evan Sederquest, Vice Chairman  
Mike Weider, Member (@7:50 PM)  
Elizabeth Richter, Member  
Richard Snyder, Member  
Aaron Hume, Alternate Member  
Selectman Chuck Myette, Liaison  
Andrew Hadik, Planning Coordinator

**Members Absent:**

**Others Present at Various Times:**

**Meeting Agenda**

**7:00 PM – General Business**

- 1) Review & approve minutes for the 8/26/20 PB meeting.
- 2) Review & approve invoices. *TABLED*
- 3) Discuss Road Agent's request for the release of \$44,562 in impact fees.
- 4) FYI, follow-up meeting with Eversource representatives.
- 5) Discuss pre-paving site walk of Jenkins Farm Road.
- 6) Question to Counsel re: Triad Winery.
- 7) Pipit Estates subdivision approval expiration and pending roadwork.
- 8) Expiration of the Crowley Woods subdivision Conditions of Approval.

**7:15 Public Hearings**

None scheduled.

**7:15 Appointments**

None scheduled.

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## **Non-Public Sessions**

1. Pursuant to 91-A:3(II)a) public employee.
2. Pursuant to 91-A:3(II)(c) reputation.

Chair Sullivan opened the meeting at 7:00 PM and read the preamble. Roll Call of members present was taken which included Rick Snyder, Elizabeth Richter, Evan Sederquest, Chair Sullivan, Alternate Aaron Hume and Selectman Myette. Mr. Weider arrived at 7:50 PM.

### **7:00 PM – General Business**

#### **1) Review & approve minutes for the 8/26/20 PB meetings.**

Mr. Snyder pointed out that it was Mr. Weider who stated the Eversource improvements were an attractive nuisance (lines 174-175).

***Mr. Snyder motioned to approve the August 26, 2020 minutes as amended. Vice-Chair Sederquest seconded the motion. A roll call vote was taken Myette – abstain, Sederquest – aye, Sullivan – aye, Snyder – aye, Richter – aye. The motion passed 4-0-1.***

#### **2) Review & approve invoices. TABLED**

#### **3) Discuss Road Agent's request for the release of \$44,562 in impact fees.**

Mr. Hadik reviewed the Board's discussion last week about the request from Mike Oleson, the Road Agent, to release \$44,562 plus accrued interest in Highway Quadrant D impact fees for preliminary work that must be done for the proposed Halls Village Road CIP reconstruction project.

Mr. Hadik noted this work includes: surveying of the ROW boundaries; geotechnical soil testing to determine if there are any underlying wetland soils that must be removed; a hydrologic study for upsizing the main culvert; environmental permitting for wetland impacts, etc.

Mr. Hadik noted most Board members had believed that the expenditure of the impact fees is allowed for the preliminary work required for this project, however, they agreed that this should be verified by Counsel.

Mr. Hadik informed that, according to Attorney Bennett, "RSA 674:21, V permits the collection of impact fees for the "construction or improvement of capital facilities owned or operated by the municipality, including...municipal road systems." The ordinance does not distinguish between costs related to the planning and design of such facilities and those arising from the actual physical construction of the facilities. Based upon the above, it is Town Counsel's opinion that the Town may use the impact fees collected for the purpose of improving this road on the costs related to the design and planning of the project." Attorney Bennett also said he has found cases which permitted the use of impact fees for this preliminary work.

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**Mr. Weider motioned to approve the release of \$44,562 plus accrued interest in Highway Impact Fees for Quadrant D for the preliminary work that must be done on the Halls Village CIP reconstruction project. Mr. Snyder seconded the motion. A roll call vote was taken Weider – aye, Snyder -aye, Richter – aye, Sederquest – aye, Myette – abstain, and Sullivan – aye. The motion passed 5-0-1.**  
**4) FYI, follow-up meeting with Eversource representatives.**

Mr. Hadik reported meeting on Monday with Jeni Menendez (Environmental Permitting Specialist) and Matt Flanders (Siting and Construction Services), two of the three representatives from Eversource at last week's meeting. They had just spent the morning visiting most of the powerline ROW crossing points in Town and inventorying what type of work needed to be done to restrict illegal off-road trespassing.

Mr. Hadik noted he made it clear he could not speak for the Board, but did discuss future expectations. Mr. Hadik told them the Board would consider it a good faith effort if some of the more egregious access points could be addressed soon. Mr. Hadik informed them that for most crossings, Eversource may have to consider gating, fencing and/or bouldering the full frontage on both sides of each powerline crossing. Given that some of these are 150' to '170' long on each side, they said that approval for this much work would have to come from higher up in the company. Mr. Hadik noted he also discussed the need for proper signage against motorized trespass.

Mr. Hadik relayed one of the Eversource representatives advised that they would be applying for a Conditional Use Permit (CUP) within the next couple months to add the fiberoptic lines. Per Mr. Weider's concern at the last meeting, they did say they were only made aware of the addition of these lines a few months ago, so they could not have included them on any previous CUP application.

Mr. Hadik noted he spent time Thursday morning look at crossings on Google Earth. As soon as a gate went up a new (*illegal*) trail would be created to the left or right of the gate. On Rte. 121 by the 345kv line, there is a crossing on one side with a guardrail by a (*topographic*) drop-off. The representatives expressed a concern by their legal counsel that placing rows of boulders to restrict illegal access may be interpreted as creating a new property line boundary.

Selectman Myette asked why materials would need to be brought in when boulders, etc. are available on site? Mr. Hadik said he did bring this up during the discussion.

Ms. Richter noted she agreed with Mr. Snyder that improved (*powerline*) infrastructure is needed, but noted she also agrees with Mr. Weider that "we had no idea we were going to end up with this new gravel road system, and it is infuriating to listen to Eversource' concerns about liability against posting them (*against illegal motorized trespassing*). The Town is entitled to help with enforcement, physical barriers, etc." and she opined to "stop telling us why they can't do things."

Mr. Hadik noted that Eversource benefitted from the 21% corporate tax rate cut two or three years ago. The occasional repair of a gate or relocation of a boulder on an ongoing basis should be taken in stride.

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Mr. Weider noted the Town was one of Eversource's last stops as far as hurdles go, after going to US utilities commissions, PUC (state) and Federal programs. Mr. Weider said he bet if the applications they sent into those organizations were read, they would show the project was larger than the Board was told.

Mr. Snyder noted that Eversource is concerned about the increased liability / loss of legal protection from posting signage. He said this can be discussed further with Eversource.

Mr. Weider added that other towns had the gravel removed. These improvements were to be short-term. Mr. Snyder noted he was not certain they ever told us they would remove the gravel or more than the wooded mats. Mr. Hadik noted gravel was discussed, and he thought that a Board Member had opined the gravel would be removed after construction was completed. There was further discussion by the Board.

Mr. Hadik noted he hopes to see some signs, boulders, and fencing before the winter starts. Ms. Richter agreed, saying they can show they are dealing in good faith by doing everything possible to block these (*powerline*) access roads.

#### **5) Discuss pre-paving site walk of Jenkins Farm Road.**

Mr. Hadik reported that on Tuesday morning, he attended a site walk with Scott Bourcier and Keith Martell to review last year's pre-paving construction punch list created by Mr. Bourcier. The list contains 24 different types of recommendations to address outstanding items and issues, some of which have multiple occurrences. Mr. Martell is hoping to address these items prior to paving sometime in October. They have a question about one of the requirements (#19) which is about signage for Jack Road. #19 reads: Post "Jack Road – Class VI" in two locations on Jenkins Farm Road. Mr. Martell would like to know what the Board would like the signs to be like.

Mr. Hadik recommended small portrait-oriented signs with: Jack Road, Class VI Road, No Motorized Access Allowed. They do not have to be a 8' poles and full-sized street signs. Selectman Myette asked why there was no motorized access allowed on a Class VI road? Mr. Hadik noted he understood motorized use of Class VI roads is only legal if the Class VI road is being used to access property owned by the user. Mr. Hadik noted other Class VI Town roads such as Green Road where the BOS has approved a gate and done enforcement. Selectman Myette noted ATV use is restricted by state law to have require the owner's permission.

Mr. Hadik noted Road Agent Oleson was not able to attend the site walk. The site walk confirmed the 5' gravel shoulders need to be re-established in places. It was agreed not to address abutter impacts and landscaping within the ROW that was more than 5' off the edge of the pavement. Mr. Bourcier will be providing Mr. Martell and the paving company with the specific preparations and environmental conditions that must be met to pave the wearing course. Crack sealing must be done at least 1.5 to 2 weeks before the wearing course is placed.

#### **6) Question to Counsel re: Triad Winery.**

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Mr. Hadik stated that after last week's meeting, he was reviewing the ZBA's lengthy and detailed meeting minutes discussing Triad Winery's application for a variance. During the review he received a call from Billie Maloney, the ZBA's chairperson. She was very concerned about the fact that the applicant was not applying for a variance for a commercial business permit. She listed many reasons, most of which are listed in the ZBA's meeting minutes. She urged him to check with Counsel to see if this use truly qualified as agritourism per NH's RSAs.

Mr. Hadik noted that this is a unique situation, and one that he is not familiar with in his understanding of the agritourism statutes. In this situation, because of the likelihood of an appeal from abutters or the ZBA should the Board approved this Site Plan Review, Mr. Hadik forwarded all the information to Attorney Bennett for his opinion. Mr. Hadik noted he has not received a written opinion yet, however, he expects to have one by next week's meeting.

Mr. Snyder asked about maple syrup production being a similar use, and referenced a situation where sap is collected on the premises as well as other sites. Ms. Richter noted Triad will plant grapes at some point.

The Board agreed that Counsel should be consulted.

#### **7) Pipit Estates subdivision approval expiration and pending roadwork.**

Mr. Hadik explained he just received some questions from Mr. Josh Naughton (*owner*) regarding the Pipit Estates Subdivision which will require detailed written responses. In summary, Mr. Naughton now has a road contractor and would like to construct the private road, Robin Way, before winter. Mr. Hadik noted he assumes he will build the road and then bond the rest so he can get the subdivision recorded. After constructing the private road, a revised bond amount will be required.

Mr. Hadik noted the date of conditional approval for this subdivision was September 5<sup>th</sup>, 2018. Condition #4 states *"Conditions #3.a through #3.n for Phase I shall be met within one (1) year of the date of the Conditional Approval, or the entire subdivision becomes null and void. If, in the opinion of the Board, "good cause" is shown, an extension may be granted."* Also Condition #9 states *"Active and substantial development shall be deemed to have occurred when the roadway shown on the plan has been constructed to finish grade within 24 months after the date of approval and has been determined by the Chester Planning Board or their designee to comply with the approved subdivision plan, and satisfactory financial guarantees remain on deposit with the Town to insure completion of the remaining improvements."*

Mr. Hadik asked the Board how it wants to handle the expiration of these Conditions of Approval (CoA)? Mr. Hadik agreed there is good cause to grant an extension (*prior financing & bonding issues*), and can request Mr. Naughton to submit a request for an extension in writing for the Board to approve by motion at next week's meeting. Or, Mr. Hadik noted, the Board could require a formally noticed public hearing, to include the noticing of the abutters. Mr. Hadik noted no changes to the CoA have been requested.

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Mr. Weider was in favor of a fully noticed public hearing.

Mr. Snyder asked Mr. Hadik if the one-year time limit was made clear in the CoA. Mr. Hadik said yes. Mr. Snyder noted that if the applicant has missed the deadline, then he agrees with Mr. Weider. Ms. Richter noted the applicant would need to show good cause for an extension. Mr. Snyder noted the CoA are now null and void unless the Board determines otherwise.

The Board agreed that a full public hearing with renotification of the abutters was required, and Mr. Hadik will notify Mr. Naughton of this.

#### **8) Expiration of the Crowley Woods subdivision Conditions of Approval.**

Mr. Hadik reported he received an email and phone call from Eric Mitchell regarding the Crowley Woods Subdivision. Apparently, the Builder will be resolving his issues soon with the Town of Candia regarding the required improvements to Crowley Road. The date of conditional approval for this subdivision was September 10<sup>th</sup>, 2018. This subdivision has the same expiration CoAs as Pipit Estates, and Mr. Mitchell acknowledges the approval has expired.

Mr. Hadik said in this situation he has opined that another public hearing is required because the CoA were never completely finalized. As referenced by the CoA #4.b, no bond estimate was ever commissioned or submitted. Mr. Hadik said he also does not know if there is a contract for construction management in force. As referenced by the CoA #4.h, no final plan for the improvements to Crowley Road has been submitted. As referenced by the CoA #4.s, no copies of the State's Wetlands, Site Specific, or Subdivision permits have been submitted to the Town as of yet.

Mr. Hadik noted that being a subdivision of regional impact, another public hearing is certainly warranted to fill in the blanks and re-finalize the CoA, as well as notifying the abutters that the construction of this subdivision will be commencing.

Mr. Snyder agreed that another public hearing was warranted. The Board also agreed, and Mr. Hadik will be notifying Mr. Mitchell of this as well.

#### **7:15 - Public Hearings**

None scheduled.

#### **7:15 – Appointments**

None scheduled.

#### **Non-Public Sessions**

*Mr. Snyder motioned to go into non-public session pursuant to 91-A:3(II) (a) & (c) public employee and reputation. Mr. Weider seconded the motion. A roll call vote was taken Sullivan – aye, Sederquest –*

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***aye, Snyder – aye, Weider – aye, Richter – aye and Myette – aye. With all in favor, the motion passed unanimously.***

The meeting was closed to the public at 8:03 PM.

***Mr. Weider motioned to come out of non-public session. Mr. Snyder seconded the motion. A roll call vote was taken Sullivan – aye, Sederquest – aye, Snyder – aye, Weider – aye, Richter – aye and Myette – aye. The motion passed unanimously 6-0-0.***

The meeting was reopened to the public at 8:45 PM.

***Mr. Weider motioned to seal the minutes of the non-public session for one year. Mr. Snyder seconded the motion. A roll call vote was taken Sullivan – aye, Sederquest – aye, Snyder – aye, Weider – aye, Richter – aye and Myette – aye. The motion passed unanimously 6-0-0.***

#### **Adjournment**

***Ms. Richter motioned to adjourn the meeting at 8:47 PM. Mr. Sederquest seconded the motion. A roll call vote was taken Sullivan – aye, Richter – aye, Snyder – aye, Sederquest – aye, Weider – aye and Myette - aye. The motion passed unanimously 6-0-0.***

#### **Future Meeting Dates**

- September 9 –
- September 23 –

***Codes: PH – public hearing, PHC – public hearing continuance, CD – conceptual discussion, HB – Home Business, LLA – Lot-Line Adjustment, SPR – Site Plan Review, SUB – Subdivision, CUP Conditional Use Permit)***

Respectfully submitted,

Nancy Hoijer

Recording Secretary