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5 **Stratham Planning Board**
6 **Meeting Minutes**
7 **October 16, 2013**
8 **Municipal Center, Selectmen's Meeting Room**
9 **10 Bunker Hill Avenue**
10 **Time: 7:00 PM**
11

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13 **Members Present:** Mike Houghton, Chairman
14 Bob Baskerville, Vice Chairman
15 Bruno Federico, Selectmen's Representative
16 Jameson Paine, Member
17 Tom House, Member
18 Mary Jane Werner, Alternate
19 Christopher Merrick, Alternate
20

21 **Members Absent:** Steve Doyle, Alternate
22

23 **Staff Present:** Lincoln Daley, Town Planner
24

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26 **1. Call to Order/Roll Call.**

27 The Chairman took roll call.
28

29 **2. Review/Approval of Meeting Minutes.**

30 a. September 4, 2013

31 The minutes were not ready for review

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

33 a. **Town of Stratham, Planning Board, 10 Bunker Hill Avenue, Stratham NH.**
34 Amending the Town of Stratham's Site Plan Review Regulations, Sections 4.5.2 and
35 7.2 and Subdivision Regulations, Sections 1.5.4, 4.4.8, and Addendum C.3 to allow
36 letters of credit as an acceptable form of performance/maintenance surety. (*Continued*
37 *to December 4, 2013*)
38

39 b. **Makris Real Estate Development LLC, for the property located at 32 Bunker Hill**
40 **Avenue, Stratham, NH., Tax Map 9, Lot 49.** Waiver request from the Stratham
41 Subdivision Regulations, Section 4.4.8 to allow the posting of letter of credit for the
42 subdivision project and to amend the July 18, 2013 approved subdivision Notice of

1 Decision, Condition #4 involving the inspection and maintenance of a drainage
2 structure. (Continued to December 4, 2013)
3

4 Mr. Houghton informed the Board that they had received a request to continue agenda
5 items 3.a. and 3.b. from the applicant. Mr. Daley explained that after speaking with the
6 Town Administrator, Paul Deschaine, additional guidance from Town Counsel is
7 needed to provide more specificity on the types of language that need to be included in
8 the regulations. For the second item, the idea is to allow for the developer and the
9 Town to further discuss the issue involving the underground storage chambers and also
10 to allow the Town to craft the language to allow the developer to ask for a letter of
11 credit.
12

13 **4. Public Meeting(s).**

- 14 a. **Makris Real Estate Development LLC, for the property located at 32 Bunker Hill**
15 **Avenue, Stratham, NH., Tax Map 9, Lot 49.** Proposed reduction to the performance
16 surety.

17 Mr. Daley said there was a letter from the Highway Agent, Colin Lavery dated
18 October 16, 2013.

19 Ms. Makris from Makris Real Estate Development said that she was not notified that
20 this was on the agenda this evening and therefore had not prepared for it. Mr. Daley
21 said it was a fair observation and advised the Board to continue this to December 4,
22 2013 also.

23 Mr. Baskerville made a motion to postpone Item 3.a. on the agenda which is amending
24 the site plan review regulations sections 4.5.2 and 7.2 and Subdivision Regulations,
25 Sections 1.5.4, 4.4.8, and Addendum C.3 to allow letters of credit as an acceptable form
26 of performance/maintenance surety until December 4, 2013. Motion seconded by Mr.
27 Paine. Motion carried unanimously.

28 Mr. Baskerville made a motion to postpone Item 3.b. on the agenda, Makris Real Estate
29 Development, for the property located at 32 Bunker Hill Avenue, the waiver request
30 from the Stratham Subdivision Regulations, regarding the posting of letter of credit
31 Section 4.4.8 to December 4, 2013. Motion seconded by Mr. House. Motion carried
32 unanimously.

33 Mr. Baskerville made a motion to postpone Item 4.a. on the agenda Makris Real Estate
34 Development LLC, for the property located at 32 Bunker Hill Avenue, the proposed
35 reduction to the performance surety to December 4, 2013. Motion seconded by Mr.
36 Paine. Motion carried unanimously.

- 37 b. **Zoning and Land Use Regulation Amendments.**

38 Mr. Daley said he had provided a general list of potential amendments to the Land Use
39 regulations, Zoning Ordinance and Town Ordinance which will be occurring before the
40 Board during the next few months.

41 Ms. Werner interrupted to ask if the memorandum from Mr. Lavery was to be
42 discussed on December 4, 2013 also. Mr. Daley stated for the record, that it was.

1 Mr. Houghton asked if the regulation amendments were in conjunction with the
2 calendar provided by Mr. Daley. Mr. Daley said it was and explained there are
3 statutory deadlines which require amendments to the different regulations to be
4 submitted by certain times. The first time the Town can post zoning amendments for
5 consideration at the 2014 Town meeting would be the middle of November 2013. Mr.
6 Daley continued that any changes to Land Use regulations require a minimum of one
7 public hearing for the Planning Board, Town Meeting approval is not required. Mr.
8 Daley started with Subdivision Regulations which do not require Town approval, only a
9 public hearing. The first item Mr. Daley began with was melding the changes that were
10 done to the Zoning Ordinance pertaining to Open Space Cluster Subdivisions and
11 modifying the language within the Land Use regulations to reflect those changes that
12 were done earlier in the year. The next one referred to Stormwater Management,
13 Section 4.4.14 and addendum C to the Subdivision Regulations which is what was
14 discussed previously via the consultants to help rewrite the Stormwater Regulations for
15 the Town. Earlier letters of credit were mentioned; Section 1.5.4, 4.4.8, addendum C
16 iii, the purpose of which is to allow letters of credit to be an acceptable form of
17 performance maintenance surety.

18 Ms. Werner asked why they weren't currently accepted. Mr. Deschaine explained that
19 they were once accepted, but in the early 90s there were a couple letters of credit that
20 could not be honored due to the banks failing. The banks nowadays in this region are
21 not declining in the current economy so the Board of Selectmen now feel that they
22 could be reintroduced, however the language to allow them needs to be looked at by the
23 Town's counsel first. Mr. Merrick asked if the Planning Board will be allowed to
24 evaluate accepting a Letter of Credit on a case by case basis. He felt it might be safer
25 for the Town if a large development were to give a bond rather than a Letter of Credit.
26 Mr. Deschaine said it would only leave a surety bond option if the development was
27 huge. He added also that if a bank deems a project/development to be credit worthy,
28 then the Town should probably accept that. Mr. Daley said to mitigate some of the risk
29 the language needs to be developed.

30 Mr. Daley continued that another suggested amendment which Mr. Baskerville
31 expressed interest in that will involve the Highway Agent, Mr. Laverty is the roadway
32 design and construction specifications, addendum 3C to bring the roads up to more
33 current standards and acceptable practices.

34 Mr. Daley said under Site Plan regulations there are two items. The first one follows
35 the Letter of Credit discussion; within the regulations there is reference to the
36 Rockingham Planning Commission (RPC) circuit rider, the idea is to eliminate that
37 entirely as there is no need for one anymore as staff are available to provide those
38 services. Paul Deschaine asked if Mr. Daley had contemplated charging a builder for
39 the Planning Board's time if an application had exceeded a certain norm. Mr. Daley
40 said he hadn't thought about it, but it could be part of a future discussion. Mr. Daley
41 informed the Board that he is looking currently at fees and rates for applications with
42 the Building Inspector/Code Enforcement Officer so it could be included within that
43 discussion looking at the fees associated with his time over and above the application
44 fees that applicants are charged. Mr. Deschaine said he thought the same circuit rider
45 reference was in the Subdivision Regulations. Mr. Daley said he would double check it

1 as he didn't remember seeing it. Mr. Daley said the second item to consider refers
2 again to the Letter of Credit.

3 Mr. Daley then turned to the Zoning Ordinance amendments. He would like to get the
4 Board's input on doing a Form Based Code for the Town Center district. After a brief
5 discussion, the Board was supportive of drafting Form Base Code regulations for the
6 Town Center District.

7 Under Town Ordinances, Mr. Daley said they are looking at two potential changes; first
8 involving the creation of a Stratham Town Center District Revitalization Tax Relief
9 Program under NH RSA 79-e and Economic Revitalization Zone Tax Credits. The
10 Town Center District Revitalization Tax Relief Program allows qualifying individuals
11 an opportunity to apply to the Board of Selectmen for a temporary tax relief on the
12 improvements made to the property for a finite period of time. Mr. Daley and
13 Deschaine said the tax relief would be for up to five years. Mr. Daley said this program
14 was identified by the Economic Development Committee (EDC) who felt the Town
15 Center was a good area for this program to be employed and this will require a Town
16 Meeting vote to give the Board of Selectmen the authority to provide this tax
17 exemption and to adopt the regulatory language associated with this program. Mr.
18 Deschaine added that he thought this program was going to include the PRE zone also.
19 Mr. Daley said he thought that was for the Economic Revitalization Zone Tax Credits
20 (ERZ) and not the 79.e. Mr. Houghton confirmed 79.e. was for the Town Center only.
21 Mr. Daley said one project that could benefit from this program is the old community
22 college. Juliet Marine, who are hoping to move into that building will be employing
23 upward of 200 employees.

24 Mr. Daley said the second item under Town Ordinance would be the creation of utility
25 districts pursuant to Senate Bill 11. Mr. Deschaine is the author of this bill. Mr.
26 Deschaine said towns have to adopt the legislation before applying for it within the
27 Town. The process for that is that it has to be brought before the Town meeting
28 authorizing the Town to create a utility district, define where the district is, which
29 services are going to be provided within that district, designating a governing body to
30 oversee the activities within that district, and the method of appointing the governing
31 body. The members of the governing body can be elected or the Board of Selectmen
32 can appoint them. Once it is voted in, that governing body can proceed with creating
33 the ordinances and a budget in terms of what those charges would resolve.

34 Mr. Daley said what is important about this Bill is at the EDC creating TIF districts and
35 this would replace that and create a way to recoup money for the Town. Mr. Daley
36 informed the Board that the Town Ordinances are being done by the Public Works
37 Commission (PWC) and the EDC. The Planning Board may be asked to contribute, but
38 will not be part of the drafting process.

39 **c. Recommended Planning Board Procedures.**

40 Mr. Daley gave the background for discussing Planning Board procedures explaining it
41 referred to an appeal that was filed for a rehearing of the variance granted by the
42 Zoning Board of Appeals (ZBA) for the Sarnia Properties project at 3 Portsmouth
43 Avenue. Mr. Daley said he had spoken with the abutter's Counsel who provided some

1 reasons for the appeal and some were design elements, others were more procedural to
2 do with the Board. One of the major areas that the abutter was appealing was the
3 waivers granted by the Planning Board for the application. There are provisions in the
4 Site Plan Regulations that require the Board to evaluate each waiver request based on
5 the intent to meet the Ordinance regulations, but also any harm done to the individual.
6 The Board has to evaluate the 2 criteria for each individual waiver and ensure that it's
7 been discussed and voted upon by the Board which may have been missed on this
8 occasion.

9 Mr. Daley said he has created a form which requires an applicant to complete a waiver
10 request form and include the reasons for why the applicant is requesting that waiver.
11 This is a way to make sure that the Board is voting on aspects of an application in the
12 correct form and function and in future there won't be an appeal going forward if the
13 procedure is followed properly. He continued that he had spoken with the applicant's
14 attorney and they are currently looking at a settlement between the abutter and the
15 developer of the property. Official word hasn't been received yet, but the Town
16 anticipates a legal document soon confirming that the abutter has withdrawn the appeal
17 from the Superior Court and they have already contacted the ZBA to negate the request
18 for a rehearing from them.

19 Another element, Mr. Daley said with regards to that example; as the Board looks at
20 applications for the Gateway, the Board really needs to be on the same page with
21 requiring certain elements be included as part of that review process. He observed that
22 although the Sarnia Properties development is not in the Gateway District, it did offer
23 opportunities to be consistent with the other projects in the Gateway District. One
24 element Mr. Daley was insistent on was the addition of sidewalks to Stoneybrook Lane.
25 The Board decided not to include that as one of the elements and he felt that the Board
26 should not look at the present, but the future uses of that property.

27 Mr. Deschaine added that the history behind waivers is that they were given regularly
28 carte blanche because the Board created the regulations for that waiver. That changed
29 about 8 years ago when an abutter sued the Planning Board for an approval on a waiver
30 that was given because it was given without any real thought or documentation. The
31 abutter argued that that was a condition of the approval to which he objected, but he
32 had no basis to make his objection because no reason was given as to why the waiver
33 was granted. The court agreed. A new law came in as a result of that which basically
34 states that a waiver is the Planning Board's equivalent of the ZBA variance.

35 Mr. Baskerville said he is in favor of having a waiver application, but his only concern
36 is using hardship criteria as it is for a variance. Mr. Baskerville said he would be
37 alright with it if it said hardship or circumstances warrant.

38 Mr. Daley then talked about when the Board reaches the point with an application that
39 they feel comfortable enough to allow the Planning staff to draft the Notice of Decision
40 to include all of the conditions that were pre discussed and then continue that public
41 hearing to the following regularly scheduled meeting. That allows the Board to review
42 the Notice of Decision in case something has been missed and it is a more efficient way
43 of meeting the 5 day rules per state RSA requiring that at least a draft Notice of
44 Decision be written within 5 days of the decision being made. There may be some push

1 back from developers saying the Board is delaying them, but Mr. Daley feels this is a
2 more efficient system. The Planning Board felt this was a good idea. Mr. Daley said
3 he would also like the signing of mylars and plans to happen at the meetings so the
4 Board can see the final plans. Mr. Deschaine said his only concern would be if a mylar
5 was not accepted by the Registry of Deeds after it was signed. Mr. Daley explained
6 that the applicant is required to have it screened by the Registry of Deeds prior to
7 submitting it to the Town for the Planning Board's approval and signature of the
8 Chairman so it shouldn't happen.

9 **5. Miscellaneous.**

10 There were not updates or miscellaneous items to report.

11 **6. Adjournment.**

12 Mr. Baskerville made a motion to adjourn the meeting at 7:51 PM. Motion seconded by
13 Mr. Federico. Motion carried unanimously.