

TOWN OF NAHANT

Planning Board

December 21, 2021

Dan Berman called the meeting to order at 6:05 pm, stating that the meeting was properly noticed, and called the roll of those members attending:

Daniel Berman, Chairman – Here

Calvin Hastings, Vice Chairman – Here

Sheila Hambleton – Here

Patrick O'Reilly – Not Present

J Shannon Bianchi – Here

Steven Viviano – Here

Rob Steinberg, Recording Secretary – Here

Kristen Standish (alternative member) – Here

John Stabile (alternate member) – Here

BOS members Antrim and Canty as well as Dan Skrip, counsel to the Town, also attended. The two Selectmen attended only portions of the meeting and did not jointly participate in discussions of any issues.

Shannon moved to stop the recording of Planning Board meeting unless the Chair determines it should be recorded, and the motion was seconded by Shelia, and discussion ensued. Dan Berman noted that recording of meetings started without our knowledge and meetings have been posted to youtube without our knowledge, and now the PB is addressing it. Dan stated that it may be prudent not to record meetings given the animosity with NU. Rob asked Dan Skrip whether if we stop recording it creates an impression of lack of transparency and create "atmospheric" issues in the NU litigation. Dan Skrip said the PB is not legally required to record meetings and the decision to stop recording the meetings has no bearing on the NU proceeding. Dan Berman noted that we are not reversing a position. Patrick noted that not usual for boards not to record stated that he would be disinclined to stop recording the meetings but also noted that recording suppresses free discourse and there are good reasons not to record. Dan asked whether we could deal with the issue of recording and publishing on youtube as separate issues, but then suggested we not separate those issues. Dan noted that our meetings are opened and NU can attend if they want. Kristin noted that we should ask people to reveal their identity, but Dan stated that we reviewed that issue and decided we should not require persons to identify themselves unless they want to speak.

The vote on the motion to stop recording and publishing recording of the meetings was as follows:

Daniel Berman, Chairman – yes

Calvin Hastings, Vice Chairman – yes

Sheila Hambleton – yes

Patrick O'Reilly – no

J Shannon Bianchi – yes

Steven Viviano – yes

Rob Steinberg, Recording Secretary – yes

Dan then asked for a motion to approve the minutes dated December 7, 2021. Shelia made that motion seconded by Cal. The vote was as follows:

Daniel Berman, Chairman – yes

Calvin Hastings, Vice Chairman – yes

Sheila Hambleton – yes

Patrick O'Reilly – yes

J Shannon Bianchi – yes

Steven Viviano – yes

Rob Steinberg, Recording Secretary – yes

Dan then asked for a motion to approve the minutes dated December 7, 2021. Shelia made that motion, seconded by Cal. The vote was as follows:

Daniel Berman, Chairman – yes

Calvin Hastings, Vice Chairman – yes

Sheila Hambleton – yes

Patrick O'Reilly – yes

J Shannon Bianchi – yes

Steven Viviano – yes

Rob Steinberg, Recording Secretary – yes

Dan noted that the only statement noted in the gap in the recording was that the recording was mistakenly turned off before the motion had passed and there was no other discussion while the recording was turned off for a very brief period of time.

Dan Berman then asked for a motion to approve the meeting minutes dated December 15, 2021.

Shelia made that motion, seconded by Cal. The vote was as follows:

Daniel Berman, Chairman – yes

Calvin Hastings, Vice Chairman – yes

Sheila Hambleton – yes

Patrick O'Reilly – yes

J Shannon Bianchi – yes

Steven Viviano – yes

Rob Steinberg, Recording Secretary – yes

Dan asked for an update on cross referencing the record for the NEU proceeding. Shannon asked about the approach and Dan said that there should be a bullet point presentation in each folder about a topic that is covered in another folder.

Dan asked for an update from Sheila on quarterly meetings on economic development planning meetings. Dan asked if the PB should participate in these quarterly sessions and she said yes. Dan asked if someone wanted to participate. John Stabile said he would be interested.

Dan then asked about the citizen planning meetings, and how we could reimburse a member who attends from our budget. Sheila said they are very useful. Sheila said when people sign up for these meetings, we can approve the expenditure. Dan said members should contact Sheila if they want to attend.

Dan then turned to the budget. Sheila said that the number for the budget should be submitted tomorrow. Sheila stated that the budget last year was \$2,700. Sheila noted that the town-owned property survey is not in our budget but funded by CPA money (which we would request). However, the master plan would come from the PB budget. And, if we sent a survey to the public about the marijuana by-law or short-term housing, we would need budget money. Sheila thought \$5,000 would be needed. Dan noted that we need to make a request for CPC money to survey town-owned land in big Nahant before the deadline in late January. Sheila thought there were about 10 properties. Dan asked that Cal and Sheila to write-up what needs to be submitted to the CPC for the meeting on January 18.

Next, Dan turned to new business. With respect to Bear Pond restoration, Dan asked that Shannon recirculate his letter. Shannon noted that the BOS were going to continue to dredge at Bear Pond in the winter to removed phragmites from ditches. Shannon said it will look twice as bad if the Town tries to remove them incorrectly, and that is what happened last year. Shannon said we are trying to eliminate the problem by getting a free study to determine the best approach. Shannon said we can send a letter to go back to the CPC, BOS or advance an article at the town meeting. The free Corps study requires a signature by the CEO of the Town so the BOS needs to give Tony Barletta authority.

Shannon said the process is that the Corps determines whether they want to study it, and then they study it. Then, there is a 65/35 cost sharing to implement the plan, and Nahant can seek money to assist it in paying the Town's share. Shannon there are people in the Town opposed to Corps involvement.

Josh Antrim said BOS is happy to consider the proposal for environmental restoration, water quality, and a drainage/flood mitigation effort to take \$100k of free money for the Corps to do a study. Josh noted that an article passed to study the area near 35 Castle Road and determine the feasibility of opening the pipe and the permitting required. Barletta and Antrim walked the land to review elevation of pipes that feed the area. Josh said, to the extent the BOS can help, we will consider it. Shannon noted that, with respect to permitting, the Corps and that is why the Corps' permitting authority is why the Corps has this ecological program. It makes sense to go to the Corps, particularly given the Corps will help us for free because we have a rare situation where Shannon believes we qualify for the program.

Dan said we would send the letter to the Board of Selectmen attached hereto and then we would propose a meeting with the BOS to discuss the program. Shannon recommended changing the last paragraph to have a blank instead of Shannon Bianchi named as point of contact on the Letter to the ACOE. Patrick suggested that we add to improve water quality to the first sentence in the second paragraph.

Shannon moved to send the two documents related to the restoration of the Bear Pond ecosystem as edited in the meeting to the BOS for their consideration and authorize the corresponding secretary to send, seconded by Sheila. The vote was as follows:

Daniel Berman, Chairman – yes

Calvin Hastings, Vice Chairman – yes

Sheila Hambleton – yes

Patrick O'Reilly – yes

J Shannon Bianchi – yes

Steven Viviano – yes

Rob Steinberg, Recording Secretary – yes

Dan next turned to an Approval Not Require ("ANR") plan for coast guard housing. Tony Capachietti, an engineer, was recognized to present the plan. Dan Skrip noted that it is an ANR because there is an existing building exception to the subdivision control law with structures constructed prior to subdivision control in the 1950's. Tony said the structures front on a way that is good and passable. Tony noted that Goddard Road varies between 18 and 20 feet. It is paved and graded. Tony said it is not an impassable way, and that there are 10 lots along Castle, Gardner and Goddard Rd.

Capachietti continued that lots 1-4 do not have the required frontage as well as lot 9. The unbuildable lots are lot 13 and 14. If the PB issues ANR, then the structures can be demolished and the lots sold without losing the ability to have 12 lots. PB is certifying that there is frontage on a passable way, but they would go to ZBA to approve the area ratio, even though it is not required (but helpful for financing). Capachietti emphasized that the PB is not saying in its action that the structure would be compliant with the zoning bylaw. The PB handles subdivisions and not zoning. The PB can state that expressly in the ANR.

Sheila noted that there were subdivision control laws under the acts of 1936, chapter 211. Tony noted that the subdivision control law was enacted in 1953 so it could not be adopted by the Town of Nahant. So, the internal control law in Nahant is not relevant. The exemption under 81(L) is based on the subdivision control under the state code and the 1936 act was not under the state code. Tony said it is well established that the subdivision control law refers to the 1953 law which gave Towns the right to establish their own regulation. Tony said the houses were constructed in 1950.

Dan Berman said what was approved at the Town meeting was approval by the PB but that is not reflected in the Warrant. Peter Barba said there was no reference to PB approval of a subdivision. Peter said it did need to go before the PB. Tony said he would not have known about the ANR at the time of the Town meeting because it is so rare.

Dan Berman said his concern is that if the plan is reliant on a variance from the ZBA. Dan Skrip said a variance is not required and the PB has no authority on zoning. They are presenting to the ZBA that they had to provide one lot per structure, and they want to codify that the frontage and area is valid on each lot. Under the exemption, Dan Skrip said you lose the grandfathering of the structure once it is demolished. Dan Skrip noted that we are not bound by the plan presented at Town meeting, as long as

the plan approved is consistent with the vote. Tony said at Town meeting that this is what the subdivision could look like – it was just a representation. Tom Hamilton said he made amendments at Town meeting, and Dan Skrip said the amendments have no bearing on what is in front of the PB.

Cal asked what would limit the size of the houses, and Peter noted that the Town approval made the limit 25% of the lot size. Discussion ensued on the lots with slightly less than 10k sq. ft. Dan Berman said the point is whether we can avoid the problem of nonconforming lots. Dan Skrip said that should not hold up the ANR.

Patrick noted the issue before the PB is limited. If the ZBA said we will grant the variance but have a problem with the size of one lot, they would have to come back to the PB for an ANR. Certain lots would require frontage or area variances, which would run with the land. Under the exemption, Capachetti noted that you can build one house on one lot, as long as the roads are passable. But Capachetti said we want the variance to make the title as a clean as possible. However, the variance is not required.

Sheila and Shannon noted that we should get an extension to review the plan and review changes at the town meeting. Dan Skrip said that the ANR had to approved 21 days from last Friday or in and around January 15. Dan Berman asked to review at next meeting on January 19, and asked for an extension until January 20 to sign the mylar. Tony said he would make all lots 10k sq ft. But that the PB decision does not reflect compliance with zoning by laws.

Dan Berman noted that the next meeting is the third Tuesday in January, and asked that we set up meetings through the end of March.

Dan then asked for a motion to adjourn the meeting. Cal so moved, seconded by Sheila. The vote was as follows:

Daniel Berman, Chairman – yes
Calvin Hastings, Vice Chairman – yes
Sheila Hambleton – yes
Patrick O'Reilly – yes
J Shannon Bianchi – yes
Steven Viviano – not present
Rob Steinberg, Recording Secretary – yes

Meeting adjourned at 8:45 pm.

Meeting Minutes prepared by Recording Secretary Rob Steinberg.

Approved by Planning Board on January 18, 2022