

Planning Board Meeting Minutes
Town of Brookfield, NH
267 Wentworth Road
Brookfield, NH 03872

Thursday June 15, 2017

- I. **Chairman David Champy II called the meeting to order at 6:30 PM.**
- II. **Roll Call: Members, Alternates, Appointment of Alternates per RSA 673:11,673:12**
 - A. Members present: Chairman David Champy II, Vice-chairman Rob Collins, Ed Comeau, Steven Bailey, Bill Ziadeh and Selectman Rick Surette.
 - B. Alternates present: Tim Straz and Dianne Smith.
 - C. Members and Alternates absent: Geary Ciccarone.
 - D. Members Tardy: (None).
- III. **Appointment of Alternates per RSA 673:11, 673:12.**
 - A. Chairman David Champy II appointed Tim Straz as an alternate for an absent member of the Planning Board.
- IV. **Public Comments.**

(None).
- V. **Announcements/Correspondence/Mail.**
 - A. The latest copy of *Greenway Gazette* magazine will be available in the common office.
- VI. **Review and Possible Approval of the May 18, 2017 Meeting Minutes.**
 - A. A copy of the May 18, 2017 meeting minutes was distributed to Planning Board members.
 1. **Motion: Ed Comeau made a motion to accept the May 18, 2017 meeting minutes as provided.** Second: Vice-chairman Rob Collins. The motion passed unanimously excepting one abstention.
- VII. **New Business-**
 - A. Greenhalgh Preliminary Conceptual Consultation of a Proposed Sub-division (Rules of Procedure IX).
 1. Mr. Greenhalgh was not present.
 - B. MacKillop / George Preliminary Conceptual Consultation of a Proposed Sub-division (Rules of Procedure IX).
 1. Alan George displayed a map highlighting a proposed subdivision of Tax Map 6 Lot 1B.
 2. Alan George requested clarification with the following requirements in the Comprehensive Application Form.

- a. The necessity for a “22 X 34 inch” plan in some places in the application and a “22 X 36 inch” requirement in other places.
- b. The necessity for a three inch by three inch space for the recording the registry plan number. However, Mr. George stated, “The Registry requires a four by two” inch space.
3. Chairman David Champy II answered that the Registry’s requirements should supersede the requirements of the Comprehensive Application Form.
4. Mr. George also requested that the Planning Board consider the approval of the subdivision immediately following the acknowledgement of a completed application. Vice-chairman Rob Collins that the Planning Board has approved subdivision applications after verifying application completeness in the past.
5. Mr. George stated that they would apply for a waiver regarding the surveying of the remainder of the land since there is enough acreage to support additional lots. Vice-chairman Rob Collins responded that any waiver requests should be accompanied by written documentation stating the reasons for the waiver request.
6. Mr. George requested that upon approval, the subdivision be submitted to the Registry expeditiously.
7. Chairman David Champy II requested that the administrative assistant place the public hearing for the review of the proposed subdivision be placed on the July agenda.

VIII. Old Business-

- A. Discussion of Amending the Zoning Ordinance in Regard to Solar Panels.
Discussion regarding amending the Zoning Ordinance raised the following points for consideration;
 1. Solar Panels.
 2. The Master Plan.
 3. Wind Energy Systems.
 4. Cell Towers.
 5. Vice-chairman Rob Collins suggested that the amount of information regarding energy systems in the Zoning Ordinance should be reduced.
- B. Consideration of Survey Questions for Amending the Master Plan.
 1. The administrative assistant distributed copies of the original survey questions and their response to members of the Planning Board.
 2. Planning Board members will review the survey questions for the purpose of discussion of the revision of the Brookfield Master Plan at the July Planning Board meeting.
- C. Consideration of Tax Liens as a Prerequisite of Subdivision / Lot Line Adjustment Approval.
 1. Ed Comeau distributed a document from Legislative Services regarding the Planning Board’s authority to consider tax liens on properties that are submitted for subdivision or lot line adjustment approval.
 2. After reading the document from Legislative Services (attached), there was a general consensus that the Planning Board should not consider tax liens as a prerequisite for approval of subdivision or lot line adjustment of properties.
- D. Discussion of Pending Sate Legislation.

Approved

1. Ed Comeau reported that there were no pending state legislation that the Planning Board needed to be aware of.
2. There was some discussion as to the best way for Planning Boards to be aware of changes to the RSAs in regard to planning.
3. Chairman David Champy II thanked Ed Comeau for his effort in keeping the Planning Board informed of changes in state regulations.

IX. Public Comments.
(None).

X. Member Comments.

1. Selectman Rick Surette pointed out that it would be better if there was a procedure for involving the Planning Board before town residents present submissions to the ZBA. Selectman Rick Surette suggested that the Zoning Ordinance should contain language specifying that the Planning Board is a gateway to the ZBA. RSA 674:33 was referenced.
2. Selectman Rich Zacher pointed out that campers cannot be used as a residence in Brookfield according to the Zoning Ordinance.
3. Representative Ed Comeau suggested that the Zoning Ordinance should be amended to make allowances for “tiny homes”.

XI. Adjournment

At 8:20 PM the Planning Board meeting was adjourned.

Respectfully submitted by
George Nick, Administrative Assistant.

_____ Date 7/20/17

OFFICE OF LEGISLATIVE SERVICES
RESEARCH DIVISION - ROOM 112
603-271-3326

Memo

To: Honorabe Ed Comeau
From: Myla A. Padden, Research Director
Date: April 25, 2017
Re: Powers of Planning Boards

Earlier this month, you asked me to address two questions relating to the powers of local planning boards. Specifically, you asked the following questions:

1. Can a Planning Board ask the applicant for information regarding tax liens or back taxes as part of the application process (e.g., for subdivision, lot line adjustment)?
2. Can a Planning Board use tax liens or back tax information as a component of the approval process? For example, if Lot A has \$150k in back taxes and is being subdivided into Lot A and Lot A-1, can the Planning Board force the applicant to designate the higher-valued of the two resulting lots as Lot A? In other words, can we make sure the lien stays against the lot with the dwelling, rather than going with the low-value new building lot?

To address your questions, I contacted the Principal Planner at the New Hampshire Office of Energy and Planning (NH OEP). She offered the following analysis.

I think the first rule of municipal law to apply is that, as subdivisions of the state, municipalities have only those powers given to them by the state. The state has granted municipalities authority to regulate the subdivision and site development of land. These powers are vested in the planning and zoning boards. The state has also granted municipalities the authority to assess property and to collect property taxes. This authority is vested in the governing bodies (city councils and boards of selectmen) and in municipal assessors and tax collectors. Failure to pay property taxes results in tax liens and, eventually, the deeding of the property to the municipality. RSA Chapter 80 outlines these authorities and procedures. The deeding of property to the municipality is the remedy the legislature has given municipalities for failure to pay property taxes.

The legislature has not given the planning board any role in the collection of property taxes. Planning and zoning boards have no authority to deny applications based on delinquent property taxes or tax liens. Planning and zoning boards must base their decisions solely on the subdivision and site plan regulations and on the zoning ordinance. If a proposed development complies with those regulations, it should be approved.

The authority of planning and zoning boards to approve applications with certain conditions has been upheld by the NH Supreme Court, however those conditions must be relevant to the issues on which those boards have jurisdiction. I do not think it would be legal for a board to base subdivision approval on the condition that the applicant pays delinquent taxes, for example.

With the above information in mind, the principle planner at the Office of Energy and Planning considered your two questions and offered the following comments.

1. Can a Planning Board ask the applicant for information regarding tax liens or back taxes as part of the application process (e.g., for subdivision, lot line adjustment)?

Whether a person owes back taxes or has tax liens on their property is public information. Anyone who wants this information can obtain it from the tax collector and/or the Registry of Deeds. There is no statute that prevents a planning board member from asking an applicant this question. On the other hand, I don't think municipalities should seek this information on their planning board applications and it shouldn't factor into their decision making on whether the proposed development complies with the town's planning and zoning regulations.

2. Can a Planning Board use tax liens or back tax information as a component of the approval process? For example, if Lot A has \$150k in back taxes and is being subdivided into Lot A and Lot A-1, can the Planning Board force the applicant to designate the higher-valued of the two resulting lots as Lot A? In other words, can we make sure the lien stays against the lot with the dwelling, rather than going with the low-value new building lot?

I think the answer is no, but you have described one of two situations that can create some real problems for municipalities. The other is when the owner of Lot A owes delinquent taxes or has a tax lien and wants to merge Lot A with Lot B (a contiguous lot that Owner A also owns) so that two lots become one lot, and there are no delinquent taxes on Lot B. I think it's conceivable that planning board members might ask the applicant about back taxes or liens in these situations, but they can only base their approvals or denials on whether or not the applicant complies with the planning and zoning regulations, not on the tax information.

I'm not a legal expert on tax liens, but municipalities record liens and tax deeds at the Registry of Deeds. Subdivision approvals, as well as mergers and lot line adjustments, are also recorded at the Registry. Subdivision approval in the scenario you describe will not change the amount of taxes owed or the property subject to the lien. A title search would find both the tax lien or tax deed as well as the subdivision approval information, and I think it would create a cloud on the title to both subdivided lots. A buyer would see that as a red flag. A mortgage lender certainly would too.

I think the bottom line is that the planning board has no jurisdiction or authority to take action on behalf of the municipality to collect delinquent taxes and can't use its regulatory authority to do so. It is important for municipal officials to share information among departments – the planning department should inform the tax collector, assessors and administrative executive when they approve subdivision, merger and lot line adjustment applications. The municipality has to use the tools and remedies the legislature has given it – tax liens and tax deeds – to settle issues of delinquent taxes.

I think the planning board in the scenario described should consult its town attorney before placing that type of condition on an approval of a subdivision application. The applicant should probably get some legal advice too.

As evidenced by the preceding paragraph, the principal planner considered your questions generally and offered her opinion. As I know you understand, her comments should not in any way be considered a legal opinion on a specific case or matter.

● Page 2