

Town of Albany, New Hampshire  
Planning Board Monthly Meeting Minutes - Approved  
Monday, March 10, 2014 7:00 P.M.

Next Work Session - Monday, March 24, 2014 7:00 P.M.

The Planning Board Monthly Meeting was held at the Albany Town Hall.

Present: Chairperson Josephine Howland, Vice Chairperson Mike Helmers; Tara Taylor, Adrian Simons, Peter Carbone, Alternate; Joe Ferris, Alternate; Matt Parker, Alternate; David Maudsley, Technical Advisor; Selectmen Representative Rob Nadler, Theresa Ann Gallagher, Recording Secretary

Absent: None

Also attending: ZBA Chairman, Andy Davis

Chairperson Josephine Howland called the Planning Board Meeting to order at 7:01 P.M.

Approval of the Agenda: Chairperson Josephine Howland asked for a motion to approve the proposed agenda for the March 10, 2014 meeting; Tara Taylor made a motion to accept the agenda as proposed; seconded by Vice Chairperson Mike Helmers. Chairperson Josephine Howland asked if there were any addition or changes. Vice Chairperson Mike Helmers said he would like to add a section for a presentation of the chronological order of the Planning Board's actions regarding Todd Provencher's two Site Plan Review applications. He would like to clarify what Selectmen Representative Rob Nadler publically reported about the Albany Planning Board in the Conway Daily Sun. He asked Theresa Gallagher to check it against the actual minutes. Chairperson Josephine Howland suggested making that section 5 a or 5 if the Valladares do not show up tonight. Vice Chairperson Mike Helmers also announced that ZBA Chairperson Andy Davis will attempt to attend tonight's meeting to hear about the old laws versus the new laws concerning the ZBA. David Maudsley has information to present to him. Chairperson Josephine Howland asked all those in favor of accepting the agenda as amended signify it by saying "Aye". All were in favor. None opposed.

Approval of the Minutes: Chairperson Josephine Howland asked for a motion to accept the minutes from the Work Session of February 24, 2014; Vice Chairperson Mike Helmers made a motion to accept the minutes from the Work Session on February 24, 2014 meeting; seconded by Rob Nadler. Chairperson Josephine Howland asked if there are any errors or omissions. Selectmen Representative Rob Nadler noted that on page 2, second paragraph, the correct term is to address "tents" and not trailers. Chairperson Josephine Howland suggested if anyone sees spelling errors; please send a message to Theresa. Tara Taylor made a correction on page 4, last paragraph, 5<sup>th</sup> line from the bottom should state "former State DOT has the potential" and not "State DOT is polluting". Joe Ferris made a correction on page 3, 4<sup>th</sup> line should state "to include the cost to begin this project", not "the cost of the project". David Maudsley showed how the minutes can be projected as they are reviewed. Chairperson Josephine Howland asked for a motion to accept the minutes as amended; Adrian Simons made the motion to accept the minutes as amended; seconded by Vice Chairperson Mike Helmers. Chairperson Josephine Howland asked all those in favor of accepting the minutes as amended say "aye". All were in favor. None opposed.

Vice Chairperson Mike Helmers reviewed the procedures the Planning Board followed regarding Todd Provencher's application because negative comments were made by the Board of Selectmen Rob Nadler as public record, and the Planning Board is serious about making this true and corrected review as public record. (See attached) Todd's application states "Service Station" which according to the Albany's Town Ordinances is a commercial business. The problem started when the Town Administrator, Kathy Vizard, wrote a letter to the Town's Attorney to physically challenge the Planning Board's decision, stating in the letter that Todd Provencher was starting a home business. This was after the Planning Board made their decision, according to the Town's Ordinance, that it was a commercial business. The Planning Board gave Todd Provencher some requirements to meet for the Town Ordinances and the State DES Regulations. On January 28<sup>th</sup> the ZBA ruled 3 to 2 in favor of a variance, thus they vacated the Town's principle Ordinance for commercial zoning. After that, Todd Provencher's application was approved by the Planning Board with three conditions attached. Vice Chairman Mike Helmers pointed out an important fact: A Town cannot function when the Boards are working against each other. Another problem is concerning the ZBA. The ZBA Board members do not understand the standards by which they should be making decisions. However, in public record by the Board of Selectmen, it was eluded that the Planning Board dragged their feet in approving the applications from Todd Provencher. The real problem was caused by the improper actions done by the Board of Selectmen's Office, preventing Todd Provencher from going before the ZBA in November. Board of Selectmen Rob Nadler commented that the Board of Selectmen were not involved; the only way they became involved is when they told the Town Administrator, Kathy Vizard, that she was wrong in sharing the Attorney's e-mail with the resident and not with the Planning Board. Board of Selectmen Rob Nadler commented that the minutes in November do reflect that Todd Provencher was clearly informed why he was going before the ZBA, but there was no motion, no second and no Notice of Decision. Kathy Vizard was filling out the application for Todd Provencher and she could not figure out the Ordinance number and the section. The Planning Board commented that she should have contacted the Planning Board; also the Board of Selectmen supervises the Town Administrator and should have reviewed the application that was going to be presented to the Zoning Board of Adjustments. When Kathy Vizard helped Todd Provencher fill out his application she had a dual role as administrator: she is helping a citizen of the Town, and she is also acting as the ZBA secretary. What she did was wrong but she didn't mean anything bad. The Planning Board responded that there are three issues at hand 1) she never contacted the Planning Board 2) she contacted the Town Attorney without permission 3) she contacted the Attorney on a Planning Board decision and she asked the wrong questions to the Attorney, misinforming him of what was going on. David Maudsley said that it was made very clear in the minutes that Todd was going before the ZBA for the setback variance and change in use. Chairperson Josephine Howland added that the e-mail from the Town Administrator to the Attorney was a major problem because she did not state what the application was for and gave the Attorney misinformation, thus he gave the wrong answer. The Planning Board objects to the fact that Board of Selectmen Rob Nadler publically blamed the Planning Board for delaying the decision. The Planning Board suggested that if anyone in the Town of Albany is going to take action they have to know the Ordinances. Kathy Vizard was wrong in not knowing the setback ordinance to reference on the ZBA application.

David Maudsley presented some information for the ZBA. There are major issues to consider. First, the worksheets and decisions indicate that the ZBA has not received updated information since 2010. Area variances were eliminated, and the Supreme Court stated the conditions that have to be met to grant a variance. Secondly, in the minutes for the latest application for a setback variance there was no discussion pointing out the purpose for the setback. Nothing in the minutes reflects that the ZBA members are using updated information and background knowledge of the regulations to make their

decisions. The third issue is that, to establish the situation of the existing garage, the ZBA should have asked if it was a legal non-conforming structure. Was it in place before the zoning setback ordinance was established or had it been previously granted a variance or an equitable waiver? There was nothing in the minutes about that. If the ZBA didn't establish that, then the application moved is illegal. The question being asked is "is the existing structure illegal?" Finally, the major point is that a hardship issue is stated vary differently now by the Supreme Court than it is on the ZBA worksheets. Unnecessary hardship means owing to special conditions of the property that distinguish it from other properties in the area. If Todd Provencher's property was a steep slope, that would meet the condition. However, there is plenty room on his land to be able to move the garage or build a new one to meet setbacks.

The Town of Albany should have a copy of Municipal Law Lecture from 2009 Town and City magazine, which the ZBA should review. Since the ZBA does not meet vary often, David Maudsley suggested that they have an attorney either sit in on the meetings with them, or prime them on the application before their meetings. ZBA Chairman Andy Davis said he would like to consult with David Maudsley first, and then decide if they need an attorney. David Maudsley commented that he is surprised that there have not been more applications presented to the ZBA in the last 15 years because there are over 200 substandard lots in the Town. The challenge to the ZBA is that they have not been involved.

Vice Chairperson Mike Helmers asked what the boundary limits are when the Planning Board informs the ZBA of their decision; he is concerned about interference. David Maudsley suggested keeping the records as clear as possible. In Eaton the Planning Board meets with the ZBA before putting the changes before the Town.

Chairperson Josephine Howland told Board of Selectmen Rob Nadler that he has to make a public apology to the Planning Board for the accusations he made in the Conway Daily Sun.

Vice Chairperson Mike Helmers asked if the Rules of Procedure could be signed by the Planning Board; Theresa Gallagher did not have it with her and will bring it to the work session to be signed.

Peter Carboni suggested that the Planning Board establish a calendar to show when the meetings are and put on the website. Also a notice for the Planning Board meetings should be placed on the Town Hall's front door window.

Code Enforcement Officer Peter Carboni discussed working on the definition of structure. The same rule has to be in place for everyone. "Tents" needs to be included in the definition of structure. Peter Carboni believes residents should get a permit for tents. Agriculture structures are able to be taxed under certain conditions. The definition of structure will have to go before the residents for a vote next year because it is part of the zoning ordinances. Peter Carboni commented that, regarding some of the tents already in place on commercial properties in the Town, they need to get a permit or a cease and desist order will be given to them. The law needs to be enforced. The Planning Board agreed that the structure definition does apply to tents, which are "fixed" structures. A suggestion was made to have the Board of Selectmen write letters to all the offenders stating they have 30 days to get a permit. To be able to tax them the Planning board will have to go before the legislative body and adopt a section out of the State Regulations. The Tax Assessor will have to do that. The Board of Selectmen has the responsibility of enforcing permits. The Planning Board suggested having it mentioned in the Albany's section of the Conway Daily Sun that residents should be applying for a permit if they put up a tent.

David Maudsley mentioned that having the record in digitized form will create a history of what is happening on the property for the tax assessors.

Board of Selectmen Representative Rob Nadler reported that he informed the Board of Selectmen about all the issues the Planning Board discussed at the last meeting. They had nothing to add or comment on.

David Maudsley suggested reviewing an article in the Albany Planning Board file resources about "Networking the Local Boards." Having more collaborative meetings is in the future plan.

Theresa Gallagher reported that there was no correspondence. She gave the Planning Board the information for the OEP Annual Conference that will take place in Whitefield on May 3rd. There is no information about workshops and registrations yet. Also there is a Presentation and Listening Session for the NH Department of Environmental Services on March 27<sup>th</sup> at 4:30 PM in Littleton.

Chairperson Josephine Howland discussed the ordinance changes for 2014. Water Protection is going to be a huge undertaking and is very complicated. It involves inspection, monitoring and enforcement. The Planning Board should start drawing attention to this issue. In the meantime the State has an ordinance in place. The Planning Board is concerned about the several service stations in Albany and undercapitalized small businesses that deal with chemicals, some of which have a long term life in the aquifers. They are the ones that represent a problem for this Town regarding liability. David Maudsley suggested dealing with smaller issues as a start, such as setbacks from running water. The Planning Board decided to prioritize which ordinances will be worked on each year. Vice Chairperson Mike Helmers made a motion to have all the Board members suggest which ordinances need to be worked on for 2015 at the next work session, and only work on the few selected for this year; seconded by Chairperson Josephine Howland. All were in favor.

Old Business concerning the Master Plan reflected that the final edits were made at the last meeting. Theresa Gallagher will make the corrections and distribute the Master Plan for everyone to read before the work session. It will then be finalized and sent to Tara Bamford to review. In April there will be a public hearing for the residents to have an opportunity to review and comment on the Master Plan.

New Business concerns other issues the Planning Board has to deal with. David Maudsley will take 10 minutes at the monthly meetings to give a presentation that deals with the responsibilities of the Planning Board. One issue would be Ex Parte which involves legal implications. The Planning Board agreed that having the presentations will be very beneficial for the Planning Board.

Adjournment: Chairperson Josephine Howland asked for a motion to adjourn the meeting at 9:00 P.M. A motion was made by Tara Taylor to adjourn the monthly Planning Board Meeting at 9:00 P.M.; seconded by vice Chairperson Mike Helmers. Passed unanimously.

Respectfully submitted,

*Theresa Ann Gallagher*

Recording Secretary