

**Town of Fitzwilliam
Planning Board
Meeting Minutes
October 2, 2018**

Member's Present: Suzanne Gray, Chairman; Ross Tourigny; Terry Silverman; Robin Peard Blais, Secretary; Paul Haynes, Vice Chair; Matt Buonomano; Charlie Kenison, Selectman's Rep; and Laurie Hayward, Land Use Administrative Assistant.

Others Present: Robin and George Crowe, applicants; Bob Handy, member of Zoning Board of Adjustment; Karen Craig and Barbara Young; Laurie Hayward, Land Use Administrative Assistant (LUA).

Call to Order: The Chair Called the meeting to order at 7:00 PM.

Public Hearing: 7:00 PM. The Chair opened the Public Hearing Continuance for the Robin Crowe application for Site Plan Review regarding the request to be permitted to use the commercial building on the property currently owned by Ralph and Helen Niemela at 705 NH Route 12 South, Tax Map 8, Lot 46, in the Rural District, for a business related to creating and selling ceramic works and where elements of the proposed business may involve a studio/workshop, a retail store, making various crafts, and teaching others to create ceramic works and other crafts.

The Chair invited Crowe to step forward and share her plans. The Chair explained the process for this hearing. The Chair stated that there is one point that she wished to confirm is a possible change to the Zone in which the property is located. The Chair asked if Board Members received the application. They stated that they did not. The Chair asked the LUA to confirm the change. The LUA explained that at a ZBA meeting it was determined that the property is not located in the Rural District. She noted that the designation "Rural" was taken from a review of both the property card and the Avitar record. Both showed "Rural"; however, after a consultation with the town zoning map, it was determined that should be corrected to General Industrial.

The Chair then opened a discussion about the completeness of the application, noting that the designation of Rural Zone is now changed to General Industrial. It was noted that there was no floor plan **Silverman explained that he feels they should wait for the ZBA's determination and he would like to wait and to continue the hearing to Tuesday two weeks from now. The Chair asked for a second and it was given.** There was discussion about what the Board Members want in order to consider the application complete. Members added that there are questions about ventilation, electric, septic, and the well. Crowe stated that the Zoning Board had already visited

40 the site. The Chair explained that the Zoning Board and the Planning Board look at different
41 things. So, the Planning Board may choose to take its own Site Walk. Buonomano asked as a
42 point of order regarding the application and why his copy was more complete than one passed
43 around in the meeting. The Chair directed the discussion back to the completeness of the
44 application, asking Silverman what additional information he wishes to see. Silverman stated
45 that he wants to see information on the electric, especially as related to the kiln; on configuration
46 of the space, on egress. Silverman asked the applicant whether there has been a building
47 structural inspection. Crowe indicated that there had not. Haynes asked about the lighting.
48 Crowe explained there is no outside lighting currently; but, she expects to add some at the
49 entrance and one corner so that the entrance and the parking areas are lit. The LUA asked if
50 there was a vote taken regarding completeness. **The Chair stated that, from the discussion, it**
51 **is clear the application is not complete. Unanimous vote that they continue the Public Hearing**
52 **for the Crowe Site Plan Review to October 16, 2018 at 7:00 PM.**

53
54 The Chair spoke to Crowe, explaining that the Board is looking for her return after the ZBA meets
55 next and at that time would like to see the application completed regarding the items discussed.
56 She also told Crowe to contact the Land Use Assistant if she has questions about items the Board
57 has requested.

58
59 **Minutes:** The Chair asked members if they would object to taking up the minutes later in the
60 meeting. They did not.

61
62 **New Business:** The Chair opened with a discussion regarding the Chinook Solar visit with both
63 the LUA and the Town Administrative Assistant, Debbie Favreau, on September 25, 2018. The
64 Chair explained that she spoke with both about the meeting. Both town representatives simply
65 explained to the visitors that if they wished they could make appointments to meet with either
66 the Board of Selectmen, through Favreau, or with the Planning Board, through the LUA. The
67 Chair went on to explain that the representatives of Chinook said that they did not have to go
68 through the town because the plan meets the 30-Megawatt threshold for application and
69 approval through New Hampshire SEC Site Evaluation Committee. The impression was that they
70 had gone through the process with SEC; but, the Chair noted, the LUA contacted the Site
71 Evaluation Committee and found that there has not been an application filed for the Chinook
72 project. The Chair stated that Favreau told her that it was not clear what the Chinook
73 representatives were there for; but, from the town's point of view it was simply anything that
74 you need should be done through the two Boards and you can make an appointment to do so.
75 She asked the LUA to add her impression. The LUA stated that it was much as the Chair stated
76 and that she suggested the Planning Board would be happy to meet with them and they could
77 make an appointment. She understood that the lead spokesman during the meeting, who was
78 from NextEra, would email her about best times to set an appointment. But, she has heard
79 nothing from any of the participants in the meeting since. The LUA added that she did call

80 NHSEC and spoke to the Administrator, Pam, who told the LUC that NextEra/Chinook has never
81 filed an application although they have been aware of the potential application for months.
82 Silverman asked if it was the same group that had appeared before the Board. The Chair asked
83 the LUC if it was the same group. The LUC did not know; but, stated that there were four
84 individuals - three from NextEra and one, a consultant, Kara Moody.

85
86 The Chair continued with new business, noting that Barbara Young is here because she is
87 considering becoming Planning Board Alternate. Young spoke about her background. She
88 moved to New Hampshire in 1983 and to Fitzwilliam in 2011. Her working experience includes
89 engineering, finance, and avionics. Recently she has taught middle school for more than a
90 decade. She says she has volunteered a lot. She was on the School Finance Committee. She
91 and her husband have a hobby farm. She indicated that she is especially interested in the Master
92 Plan. **Silverman moved the nomination of Barbara Young be forwarded to the Board of**
93 **Selectmen; Haynes seconded and the nomination was voted unanimously.** The Chair told
94 Karen Craig that the Board of Selectmen has approved her as an alternate. She also told Craig
95 that she would need to go to Heidi Wood in order to be sworn in as a Planning Board Alternate.

96
97 **Old Business:** The Chair opened a discussion about the Draft Letter to Xtreme Auto. The Chair
98 stated that she has researched the minutes from the original meetings July 19, 2011 and
99 September 6, 2016. The Chair stated that the letter probably should not include anything like
100 the phrase that it is to the owner's benefit to fix the property as the Board cannot really assess
101 this. Buonomano said the draft letter was not what he expected. He stated that the letter was
102 too vague and he would like to rewrite the letter to include more specifics. He said he doesn't
103 know why there is reference to wetlands or fencing. He expected specific code violations.
104 Tourigny spoke asking Buonomano about formatting the letter so it gives points 1., 2., etc., and
105 is therefore more pointed, would resolve his issues. Buonomano offered that the problem is
106 that the letter is not a letter; but, simply restates what was in the minutes. Buonomano offered
107 to rewrite the letter. Blais indicated that she is in favor of that. Silverman spoke stating that
108 what we really need is the landscape plan. He pointed out that the location is on a state road
109 and that might have an impact. There was a question from Blais whether the Board can address
110 anything that was not addressed during the initial meetings and the original Site Plan application.
111 The Chair read from portions of the old minutes regarding the Site Plan Review and items agreed
112 to at that time, which do include fencing to screen the cars and room for 20 cars to be parked on
113 location. Buonomano noted that if the Site Plan limited the number of parked cars to 20 and
114 there were significantly more than that, there is a violation and the Board should pursue it. Blais
115 suggested that they obtain the inspection report that was required. The Chair asked the Board
116 if they want Buonomano to draft a new letter. The Chair asked Silverman what he thought. He
117 said they should look at whatever Buonomano drafts for a letter. The Chair offered her concerns
118 which are the extensive disturbance of the land, the cars parked haphazardly and without fencing
119 to screen from view, the possibility of problems with run-off from the site. Blais echoed similar

120 concerns about run-off adding that there is a concern that run-off might be contaminated by oil
121 that then migrates to streams. Haynes asked where the Board's purview is. Does the Board
122 want to get into requiring landscaping? The Chair stated that typically a Planning Board does
123 consider whether to require some forms of landscaping to act as a screen. Buonomano asked
124 the Board if they were looking for a new Site Plan to deal with expansion. Silverman offered that
125 the thought they should stick to the original site plan and whether it was acted on properly.
126 There was a question about the original intent. The Chair read from the original Preliminary
127 Consultation that it was to be an auto repair and collision business. The Board consulted town
128 ordinances to find what is permitted in the zone in question and the business as applied for is
129 permitted. The Chair questioned the sale of cars. Haynes stated that they do purchase cars at
130 auction and resell them. The Chair asked what is a junkyard and is this one. Haynes says there
131 is a license for them to take in vehicles that have been in accidents. Haynes stated that the
132 business has the required license to make those sales. Kenison spoke about his sense that there
133 was an effort by Xtreme Auto to deal with Planning Board concerns but they had problems.
134 Tourigny spoke about his recollection that there was, at the time, a discussion about the scope
135 of the work and problems they were having and the principal wanted to make corrections. **The**
136 **Chair asked for a motion to draft another letter to be drawn up and use the information from**
137 **the meetings minutes from the original meetings and the Site Plan Review. The Chair moved;**
138 **it was seconded and voted unanimously that Matt Buonomano draft a new letter to Xtreme**
139 **Auto.** There was a question whether a draft would be posted on line before the next meeting.

140
141 The Chair took up Prime Wetlands. She spoke with Paul Kotila, Chairman of the Conservation
142 Commission, and he would like an opportunity for the Conservation Commission Members to get
143 together with the Planning Board, especially the Planning Board sub-committee working on it.
144 Blais says that she will speak with Kotila about getting together on some Tuesday. The Chair
145 noted that one of the likely questions to take up is "what happened with the other Prime Wetland
146 application that was presented"? Blais spoke and said that there has been some confusion; but,
147 the town has placed this in their ordinances and that makes it town law. She says, it doesn't
148 need to be approved by the state as long as the Town has approved it. The Chair said, that may
149 be; but, from the point to view of the state and the Department of Environmental Services (DES),
150 without the state approval of the designation of Prime Wetland, there are things they cannot do
151 to support the town's efforts. Silverman explained that the problem stems from a new individual
152 working for the state giving a new interpretation of what qualifies as a Prime Wetland. Silverman
153 feels that there is a push to overturn that interpretation at which point the Fitzwilliam application
154 would comply with state regulations. Blais suggests it happen at the second meeting in October.
155 Silverman suggested wait until after the election. It was agreed that meeting with the
156 Conservation Commission take place in the second meeting of November, so on November 20,
157 2018.

158

159 **Work Session: Rules of Procedure.** The Chair explained that she contacted Carol Ogilvie
160 regarding the 200-foot requirement. The Chair stated that Ogilvie does recognize that there
161 are some New Hampshire towns that do use that language. Ogilvie offered to research the
162 language and find out where it came from. The Chair explained that it came from language
163 used by the town of Groton, Massachusetts and gave Ogilvie both her contact information and
164 Laurie's if she found additional information. The Chair also explained that the LUA did some
165 research on the Massachusetts language. The Chair read the Groton Regulation and the State
166 of Massachusetts statute language regarding interested parties and notices of public hearings.
167 In the Mass state statute Notices are sent to "abutters to abutters when they are within 300
168 feet of the property". Another notable difference is that Massachusetts, by statute requires
169 the assessors to maintain applicable tax lists and to certify the abutters lists: therefore, by
170 Massachusetts statute, liability, in Massachusetts, lies with the assessor not the town or land
171 use administrator. The Chair also noted that in the case of Fitzwilliam, consistency is a
172 problem. There have been discrepancies in the abutters lists. And, the process is not
173 consistent throughout. Zoning Board of Adjustment does not use the same approach because
174 there is nothing in the Fitzwilliam Zoning Ordinance that uses the 200-foot requirement for
175 notices. Silverman pointed out that it is only in the Site Plan Regulations that the 200-foot
176 language is used.

177
178 The Chair asked Silverman to speak to the reason the language was originally placed in the Site
179 Plan Regulation and the Rules of Procedure. He stated that he feels there was a good reason to
180 do this especially in situations involving commercial and industrial uses of property- it expands
181 the number of people who know about the hearings. Silverman added that he feels that years
182 of precedent without any actions against the town prove the point that the language is fine.

183
184 The Chair also pointed out that, because of earlier discussions about the liability involved with
185 identifying properties that are within 200 feet of a specific property and the lack of compatibility
186 with New Hampshire state definitions and statutes, the LUA did contact New Hampshire
187 Municipal Association Legal Department and spoke with Margaret Burns. Burns indicated that
188 reframing the New Hampshire definition with language that differs from state statute is
189 problematic and can open the town up to litigation. The problem is that the more restrictive
190 language; especially if the unusual wording can be construed to be intended to raise the bar,
191 expanding the number of people who could be seen as "interested parties ", thereby making it
192 more difficult to get an approval from a town land use board. It was noted that the town can in
193 some instances have more restrictive language. The Chair stated that the town can; but, in this
194 case the state provides a definition of both "abutter" and the way in which abutters are to be
195 noticed. The Chair asked for comments. Bob Handy commented that there are some problems
196 for people who want better access to information. Silverman noted that it only applies to Site
197 Plan Review. The Chair noted that problem of different notices for different Boards seems
198 arbitrary and inconsistent. Buonomano spoke, saying that, from his point of view there is a

199 problem with having the language in the Rules of Procedure just because the 200-foot applies to
200 Site Plan Review and does not apply to Subdivision Applications. Buonomano also noted that
201 problem when errors in property lines creep into tax maps, especially in the drawing and
202 measuring of lines. He asked how anyone could be expected to get an accurate measurement of
203 properties within 200 feet of another specific property. The Chair asked how the LUA determines
204 what falls in the 200 feet. The LUA stated that she uses Avitar for their lists; but, she has done
205 some research and determined that you cannot rely on Avitar. Now, she makes the best guess
206 she can by looking at both what Avitar gives on a list and then examining the tax maps and making
207 a guesstimate. Fortunately, the questions only arise with Site Plan Review applications.
208 Tourigny asked Silverman to expand on why they chose the 200-foot language. Silverman said
209 that it was to address concerns regarding the need to notify a larger group of people who might
210 be affected by industrial applications. **The Chair called for a motion. Buonomano moved that**
211 **the 200-foot language be removed from all Regulations and the Rules of Procedure.** There was
212 a discussion about what steps they would need to take as far as the interrelated documents, the
213 Rules of Procedure and the Site Plan Regulations. The Chair pointed out that the Board could
214 simply re-write the Rules and then read the new rules in two meetings. However, changing the
215 Site Plan Review Regulations requires a Public Hearing. **The vote was 5 in favor and 3 opposed.**
216 **The revised motion to remove the 200-foot rule from the Rules of Procedure. The 200-foot**
217 **language in the Rules of Procedure passed.** The Chair pointed out that the Board would need
218 to work out the Regulations and set a Public Hearing to complete the work on this item.

219
220 **Minutes:** Meeting of September 4, 2018 and September 18, 2018. September 18 Minutes: Line
221 112, Silverman asked that a statement about approving the Karen Craig be changed to “nominate
222 and forward to the select Board for approval”. Line 52, remove “at” and “was” from sentence
223 starting “Blais said”. Line 73, change “showing” to “noticed”. Line 102, show Silverman, “on
224 the Board of Directors”. Line 109 add “the LUA was requested to contact Carol Ogilvie”. **Haynes**
225 **moved and the Chair seconded. There was one abstention due to absent for the meeting,**
226 **otherwise members voted to approve as amended**

227
228 September 4 Minutes: Members ask that the LUA name and title not appear the end of the
229 Members Present list. Line 38, remove the word “intense”. Line 78, change “pushed forward”
230 to “worked on”. Line 81, change “discuss” to “discussion”. Line 83, change “there was a
231 problem with the original application from the state’s point of view.” To read “There was a
232 reinterpretation of the state regulations”. There was a question about the use of bold fonts in
233 certain places in the minutes. The LUA explained that she uses bold to show votes that are taken.
234 Line 45 is to be deleted entirely. Line 31, “cold”, change to “could”. **The Chair moved that the**
235 **minutes of September 4, 2018 be approved as amended; Blais seconded, and it was voted**
236 **unanimously.**

237

238 The Chair brought up the request from prior meeting that they get copies of the Town of
239 Fitzwilliam Construction Permit. This request was made in context of the discussion about
240 whether there should be language suggesting that people use professionals, for example
241 surveyors, to assist in preparing documentation including the Abutters List. Tourigny stated that
242 there may be situations where professional services be required. The Chair said that she has
243 copies on hand if members wish to take them home to review before the next meeting.

244
245 Buonomano expressed his concerns regarding the process used to get information to the
246 Members. As an example, he stated that he does not get anything useful out of having copies
247 of materials in his blue folder at the start of a meeting.

248
249 Buonomano went on to say that he was concerned about the process and questioned why it was
250 not smooth in the Crowe application. Now he is disappointed that the members do not have
251 the most current information or the same information.

252
253 Bob Handy spoke from the floor questioning the application form and process used for ZBA cases.
254 Handy suggested that the two Boards use the same application and take the ZBA application as
255 the basis because the two boards need the same information. There was a discussion about
256 Land Use process, including providing members with information and Buonomano's request that
257 the Board get information by mail earlier and more completely. Silverman stated that an
258 application is just a statement of intent. Silverman also stated that, in the Crowe case, they
259 brought almost no information to the Preliminary Consultation. At the Preliminary Consultation,
260 the Board made specific requests for more information which they did not provide – for example
261 the kiln and the electrical. The Regulations tell an applicant what the Board needs in order to
262 decide whether to review.

263
264 **There being no additional business to conduct, the Chair called for a motion to adjourn. It**
265 **was moved; seconded and it was unanimously voted to adjourn at 8:58 PM. The next**
266 **meeting is scheduled for October 16, 2018 and will include a Continuance of the Public**
267 **Hearing for Robin Crowe's Site Plan Review application.**

268
269 Respectfully Submitted,

270

271 Laurie Hayward

272 Land Use Administrative Assistant