



BARRINGTON PLANNING BOARD MEETING

As Chair of the Barrington Planning Board, due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. Please note that there is no physical location to observe and listen contemporaneously to the meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, this is to confirm that we are: We are utilizing the Microsoft Team for this electronic meeting. All members of the Board have the ability to communicate contemporaneously during this meeting through the Microsoft Team, and the public has access to contemporaneously listen and, if necessary, participate in the meeting through dialing the following phone #603-664-0240 and Conference ID: 855 668 359#

Call 603-664-0182 or email: birvine@barrington.nh.gov

(Approved February 2, 2020)

Tuesday, January 19, 2021

6:30 p.m.

Roll Call Vote

J. Jennison-Present
J. Brann-Present
S. Diamond-Present
D. Massucci-Present
R. Allard-Absent
A. Knapp-Absent

Members Present

James Jennison, Chair
Jeff Brann, Vice Chair
Steve Diamond
Donna Massucci

Members Absent

Andy Knapp ex- officio
Ron Allard

Town Planner: Marcia Gasses

Staff: Barbara Irvine

MINUTES REVIEW AND APPROVAL

1. Approval of December 15, 2020 meeting minutes.

A motion was made by J. Jennison and seconded by J. Brann to approve the December 15, 2020 minutes as written.

[Barrington Planning Board Meeting Minutes/bi](#)

January 19, 2021/ pg. 1 of 13

Roll Call:

J. Jennison-Yay

J. Brann-Yay

S. Diamond-Yay

D. Massucci-Yay

ACTION ITEMS FROM DECEMBER 15, 2020

2. **238-36-V-20-SR (Owner: Waldron B. Haley Revoc Trust)** Request by applicant for Site Review to amend application for a multi-family Development **ADDED** 3.4 Conditional Use Permit located off Franklin Pierce Highway (Map 238, Lot 36) in the Village District. BY: Scott D. Cole, Beal Associates, PLLC; 70 Portsmouth Avenue; Stratham, NH 03885.

J. Jennison gave a brief description of the application.

Scott Cole from Beal Associates, PLLC represented J & L Terra Holdings. Scott gave an outline below on the plan changes as follows:

- **Condo plans have been labeled and revised**
- **RoW's have been revised to say 30' and 50's RoW's, not road width**
- **Utilities have been updated on Mr. Vincent's plans, so they match the Site Plans**
- **Plans all read Site Plan; no longer say subdivision**
- **Added parking calculations on Sheet #5 and they are over and above what was required**
- **Stop signs have been added to the T intersection of the roadway**
- **Lighting plans have been updated**
- **Supplied a lighting elevation plan**
- **Landscape plans have been finalized and they are detailed**
- **Received letter from Dubois & King and responded to Dubois & King. Received second letter with minor comments and responded.**
- **They have requested one waiver**
- **Traffic study was provided and reviewed by Dubois & King. Vanasse & Associates responded to Dubois & King. This was still under review with NHDOT.**

Scott explained the waiver to the Board. The minimum coverage over a drainage pipe per Site Review regulations is 36" (3'). For residential use the requirement is 2' of coverage and explained that although this was a Site Review, it was a residential use. Scott explained that Dubois & King required that they enlarge some of the smaller pipes, which they did from 12" to 15". Scott explained that they have requested a waiver from 36" down to roughly 2 and a half feet. Scott explained that Dubois & King felt that this was a reasonable request.

J. Brann asked for clarification on Sheet #5 Note 10 and Sheet #12 and questioned the pipe size if they were asking for a waiver from 36" to 30" in some areas.

Scott explained that they may have a couple that maybe under 2 and a half feet, but they are not under pavement, they are under grass. All the ones under road have 2 and half feet coverage or 30".

S. Diamond expressed that his understanding of the purposes of the cover was the load of a truck could crush the pipe and the other to prevent freezing but you would need to go down 6' to be sure that water would not freeze.

Scott explained that he would agree with S. Diamond, but it was more about the weight and that would be for heavy equipment was why it was required more under Site Regulations. Scott explained that it would be more prone to damage for commercial uses with heavy trucks.

J. Brann explained that Dubois & King took no exception to the waiver and they had no problem with this waiver.

J. Jennison opened public comment.

J. Jennison closed public comment.

Requested Waiver:

A waiver is requested from 4.7.7.3 – Minimum drainage pipe cover to allow less than 36” of pipe cover. Section 4.7.7.3 – Minimum drainage pipe cover: All of the pipes have been lowered to the extent possible for additional cover keeping the road grades as low as possible for building construction. The proposed pipes are rated for much less cover than the required 36” and is standard practice of 2’ for residential uses. We would request a waiver to allow less than 36”. This allowance would have no adverse effects with better aesthetics.

A motion was made by J. Brann and seconded by J. Jennison to grant the waiver of 4.7.7.3 for minimum drainage cover to allow less than 36” of pipe cover as the specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate the waiver will properly carry out the spirit and intent of the regulations. Vote 3/1

Roll Call:

D. Massucci-Yay

S. Diamond-Nay

J. Brann-Yay

J. Jennison-Yay

J. Brann questioned Dubois & King’s comment on Sheet 11 of 15 about access road to the well and pump house that was confusing. The detail shows gravel underneath with loam over the top but the access road label to the septic field shown by the end building states that it was a gravel road.

Scott explained that there was a trail to the left and added a note for the portion of access road to the proposed wells to be upgraded as required for service and maintenance (showed detail). Scott agreed to take the word gravel out of the label. Scott explained that Dubois & King requested that note to be added.

J. Brann read the Comment #5 from Dubois & King: **Repeat Comment.** The areas draining for both practices and their respective impervious areas listed on the BMP worksheet do not match the HydroCAD model.

Scott explained Christian Smith, the PE, did the total drainage and they went over the design with him to find out what this was. Scott explained that you have houses with stone drip edges with treatment/infiltration next to the buildings [see detail Sheet 9]. Scott explained that there were numbers associated with these drip edges in the drainage analysis and the BMP sheet were not same. Scott explained that the drainage analysis was correct. There was more storage in the drainage pond than the BMP sheet. Scott explained that it would just a correction of the numbers.

J. Brann asked about the comment that Dubois & King made about where the snow storage was and your comment that the snow storage areas were added to Sheet 5.

Scott explained where the snow storage was on Sheet 5 by Building #5. Scott explained that he had a discussion with Marcia, and she suggested to add a note that would say in the event snow storage becomes inadequate, snow would need to be removed from the area according to the regulations.

J. Brann asked about the comment from Dubois & King talked about granite curbing and the applicant prefers bituminous curbing. J. Brann expressed that he didn’t recall a conversation on this topic regarding using granite or bituminous curbing. J. Brann explained that curbing needs to meet the regulations and the Board may require curbing the Village District. J. Brann explained that he had no problem using bituminous but wanted the Board’s thoughts.

Scott explained that this was talked about earlier on and if the roads were a main travel lane, it would be granite. However bituminous could become acceptable where they have a five-foot green strip along the road. Scott explained that there was a five foot green strip between a travel lane and where a pedestrian would be.

S. Diamond expressed that he felt that granite should be used in this area.

D. Massucci expressed that she liked the greenery.

J. Jennison explained that he looks at maintenance down the road.

J. Brann explained that this was in a private road area and would be all internal. J. Brann asked about curb ramps and asked Scott to explain what Dubois & King was trying to say and how was this addressed.

Scott explained that they modified the details because Dubois & King didn't like the previous ones that they had. Scott explained that they added labels on Sheet #9 that were not there before.

S. Diamond asked about the drainage analysis with respect to Dubois & King's comment that they recommend that the applicant revise the BMP worksheet calculations as this may affect the sizing of the ponds to handle the necessary WQV. S. Diamond asked what was the WQV?

Scott explained it was the Water Quality Value and this was in the recent letter that was just discussed.

S. Diamond asked about the water quality value they were talking about.

Scott stated he wasn't sure; they did answer their comments.

J. Brann asked about the additional spot grades added in response to Dubois & King but they recommended that you add more spot grades.

Scott explained that surprised him because the first time they asked for parking areas and then they came back saying they were talking about driveways. Scott explained that their slab elevations are to road grades to make sure they had positive drainage.

J. Brann expressed that they had the slab grades profiles and road elevations that show they are keeping the water away from the buildings and the flow to the drainage. J. Brann explained that he was satisfied looking at the plans.

Scott explained that they are all higher than the road so there would be positive drainage.

J. Brann read Marcia's comments about sending Dubois & King's comments to NHDOT and J. Brann expressed that he felt that they shouldn't send them. J. Brann asked the Board members what they thought.

J. Jennison expressed that we have never done that.

M. Gasses explained that NHDOT personnel are going to do what they're going to do.

J. Jennison asked if they were condos or rental units.

Scott explained that they are condos.

J. Jennison asked if there were condo documents.

M. Gasses explained that they do not have condo documents because in the end the State approves those documents. M. Gasses explained that she has not reviewed condos document, but you [Board] do review drainage documents.

J. Jennison stated that he was asked at the beginning of the week on how the green space was being held. J. Jennison asked if this was going to be handled by the developer or condo association.

Scott explained that would be handled by the association.

J. Jennison stated that they were asking for snowmobile access and asked if there was language to protect their access.

Scott stated that he would pass on the information about the snowmobiles; they are still working on the documents.

M. Gasses expressed that this should be added to the DRAFT Notice of Decision. She said to read:
Provide condominium documents to Town Attorney for review and address snowmobiles.

S. Diamond suggested on Sheet 9 of 15 adding tip down for ADA requirements and the sidewalks be wheelchair accessible.

Scott explained that the detail was added on Sheet 12 with sidewalk detail and for future planning the ADA protectable plate.

M. Gasses explained that she was working with Strafford Regional Planning to put together a mapping of snowmobile trails. They are going to be able to put a map layer on our website to show the approved snowmobile trails in Town.

S. Diamond questioned the Comment #3 from Dubois & King and read from the comment the following:

We recommend that the applicant revise the plans to provide more detail on all sidewalk end locations throughout the proposed project site by means of additional spot grades and/or other details on the plans. S. Diamond expressed that they are saying the spot grades are too steep.

Scott explained that if you look at the ADA ramp detail on Sheet 12 you would see 1 to 10 max slopes so for an ADA ramp that would be as steep as it could be to meet ADA requirements.

M. Gasses explained to S. Diamond that she talked to Dubois & King and they felt that it could be a little clearer and Dubois & King would sign off with the comments they made when they check to see if the applicant has done what they are asking for.

J. Brann asked M. Gasses if all of her comments were answered.

M. Gasses adding the following comments:

1. Scott mentioned adding a note that if there was inadequate snow storage that the snow be removed from the site.
2. The applicants engineer should certify in writing that all improvements have been constructed as approved.
3. Provide the documents for the condominium association.

J. Jennison opened public comment.

Susan Gaudiello from 528 Franklin Pierce Highway, an abutter to the project, questioned the height of the building that she had brought up previously. Susan expressed that the last time the Board talked about the three-story buildings John Huckins (Code Enforcement/Building Inspector) had said altering the terrain behind the buildings to make the buildings qualify as a two and half story was acceptable. Susan explained that she still has questions about that because they are still three-story buildings above the natural terrain. Susan asked the Board to explain to her where in the ordinance or the regulations allows for this alteration to obviate what she felt was the spirit and the intent of the regulation.

J. Jennison explained that he didn't know it says in the regulation it allows for such a thing but explained that the code was a height requirement and when you take into account the grade it would be like any walkout on a colonial/cafe. J. Jennison explained that you could have a garage under the house and meet the requirements. You can build up fill around your house.

J. Brann asked Scott if since the last time they discussed this, the road grades were dropped.

Scott stated that was correct.

J. Brann explained that changed the front elevation of the buildings so that they were able to be lower into the ground requiring less fill and asked if was that correct.

Scott stated that was correct and explained that what they did was to the greatest extent they could. They lowered the road, which let them set in the slabs into the existing slope as much as possible. Scott explained that was part of the reason they requested the drainage waiver that was approved because when lowering the road, you start to run out of vertical relief.

Susan expressed that she was looking at this from her perspective. Maybe she didn't know if what Scott was talking about was on the western buildings but those would be the height of those would be lower than the buildings on the eastern side. But to her it remains that they have a natural plan that they are not building up to get out of a swamp. Susan expressed that the buildings up the road was a natural hillside and felt the kind of buildings they were if there was a natural hillside. Susan wanted on record the following:

She stated that she felt the design of this development wasn't compliance with the ordinances as passed by the voters and what was presented to the voters. She felt the understanding was as to what the height of the buildings were. Susan expressed that she feels as though this maybe some normal construction process. Susan explained that she felt that the intent of these regulations.

J. Jennison thanked Susan for her comments and explained that he felt this was not in the Boards purview to change the interpretation of the definition of the building height. J. Jennison explained that The Board cannot change building codes.

Susan asked if J. Jennison was saying that the Building Codes conflict with the ordinance.

J. Jennison explained that it was probably a misinterpretation of a code if a person said that a story under the earth was a story. J. Jennison explained this was common to dig out or fill around [a foundation] in his experience. J. Jennison expressed that in his opinion that this was not a manipulation of a rule.

Susan asked if it was possible to get a legal opinion on this from the Town's Attorney. Susan expressed that she feels there was a conflict and felt this was not intent of the regulations that were passed. Susan asked M. Gasses if they could get an opinion on this.

M. Gasses explained that the interpretation Ms. Gaudiello was expounding was nothing that she has ever heard of in all the years she has worked with the Planning Board. M. Gasses explained that the as built environment was what they were talking about and if they built to the standard they propose, then the application was approvable. M. Gasses explained that they have an alteration of terrain permit for a reason; that has to do with changing the grades in a development.

S. Diamond explained that in terms of what the Board's purview was that would be something to debate. He further explained the flip side of that question was if John Huckins (Code Enforcement Officer) came up with a little bit creative interpretation. S. Diamond explained there's two aspects to the reason for this height requirement: do they have access to the building height with ladder trucks and how much of an imposing structure it is as far as the view for the neighbor goes. S. Diamond expressed that he appreciated Susan's concern regarding the imposing nature of the structure.

J. Jennison expressed that he felt John Huckins (Code Enforcement Office) didn't come up with a creative interpretation: he told them to meet the requirements and this was what they needed to do. J. Jennison explained that John Huckins told them that they need to bring in fill to create an average overall height, and this was how they could solve this problem. J. Jennison explained that he felt this was not in Code or Planning regulations that you can stipulate that someone can't excavate or add fill to modify those numbers.

Susan expressed that what this feels like it was an effort to manipulate and that means to get around the original intent of the regulation. Susan expressed that she stated she could see what direction this was heading but she wanted to be on the

record and disappointed that the Board was not looking at that a little more carefully. Susan expressed that she was also disappointed that John Huckins looked at his position as a way to how to get around the regulations in order to make this possible for the developer to do what was going to be the most marketable.

J. Jennison expressed that he needed to correct that he [Huckins] didn't manipulate the rules; he told the applicant what the rule was and what they needed to do to meet the rule. J. Jennison explained that he didn't say this was how they could manipulate the rules. J. Jennison stated that these are the rules and that John was a very straight forward guy.

Susan expressed that the manipulation that she feels happened is when there's a height restriction that's put in the regulations that the voters passed, the normal voter would have understood what building was going to look like on a property. Susan expressed now they have come up with ways to not have to meet the intent of the regulations.

J. Jennison explained that the regulation pertains to the built environment and there is no code or requirement that prohibits bringing in fill.

Susan expressed the discussion was not going to get anywhere because she was coming at it from a different perspective. Susan explained that a common person would read the regulation in a different way.

J. Brann explained that the State Law requires that sole criteria that the Board, with respect to approving or disapproving applications, must use is does the applicant meet the technical regulations or not. J. Brann explained that per the plans that have been submitted, the buildings were two and a half stories or less above ground. J. Brann explained that there are a lot of court cases where applicants have successfully appealed decisions to Superior Court because the Board have been consistent in adhering to their regulations. J. Brann expressed that these plans meet the requirement, and therefore, State Law would indicate that the applicant has met the conditions for approval.

J. Jennison closed public comment.

J. Jennison read Conditions Precedent:



Planning & Land Use Department

Town of Barrington

PO Box 660

333 Calef Highway

Barrington, NH 03825

603.664.0195

mgasses@barrington.nh.gov

DRAFT NOTICE OF DECISION NOTICE OF DECISION

[Office use only]	Date certified:	As built received:	Surety returned
<i>"Applicant", herein, refers to the property owner, business owner, individual(s), or organization submitting this application and to his/her/its agents, successors, and assigns.</i>			
Proposal Identification: 238-36-V-20-SR (Owner: Waldron B. Haley Revoc Trust) Request by applicant for Site Review for a multi-family Development, ADDED 3.4 Conditional Use Permit, along Franklin Pierce Highway (Map 238, Lot 36) in the Village District. * BY: Scott D. Cole, Beal Associates, PLLC; 70 Portsmouth Avenue; Stratham, NH 03885.			

Owner:

Waldron B. Haley Revoc. Trust
14 Shakespeare RD.
Nashua, NH 03062

Applicant:

J&L Terra Holdings
79 Exeter Road
N. Hampton
NH 03862

Professional:

Scott D. Cole
Beals Associates PLLC
70 Portsmouth Ave,
Stratham, NH 03885

Dated: January 19, 2021

Dear applicant:

This is to inform you that the Barrington Planning Board at its January 19, 2021 meeting **CONDITIONALLY APPROVED** your application referenced above.

All of the precedent conditions below must be met by the applicant, at the expense of the applicant, prior to the plans being certified by the Planning Board. Certification of the plans is required prior to commencement of any site work or recording of any plans. Once these precedent conditions are met and the plans are certified the approval is considered final.

Please Note* If all of the precedent conditions are not met within 6 calendar months to the day, by July 19, 2021, the Board's approval will be considered to have lapsed, unless a mutually agreeable extension has been granted by the Board.

Conditions Precedent

- 1) Add the following plan notes:
 - a) A Conditional Use Permit was granted for multi-family housing on November 17, 2020
 - b) A waiver was granted on November 17, section 12.2.1 Road Design Standard (Sub) requirements for the entrance road beyond 150 feet to the end of the hammerhead.
 - c) *A waiver to Section 4.7.7.3 – Minimum drainage pipe cover to allow less than 36" (granted)*
 - d) Final Landscape Design is part of this approval
 - e) School Impact Fee will be accessed at the time of the building permit by the

- Building Inspector and paid prior to the issuance of a certificate of occupancy. 14.6(1)
- f) The Stormwater Management Plan received 9/22/2020 is part of this approval.
 - g) Snow must be removed if found to impede parking or exceeds storage capacity.
 - h) Applicants' engineer must certify in writing all improvements are constructed as approved.

2) Revise the following plan notes:

- a) Add the NHDES Alteration of Terrain Permit #
- b) Add the NHDES Subsurface Bureau C.A. #
- c) Add the NHDES Water Supply Permit #
- d) Add the NHDOT Driveway Permit# to the plan
- e) Remove note #3 Tax Map correctly shows lot as Lot "36". Tax map was revised.

3) Make the following plan revisions:

- a) Revise Approval Block 3" X 3.5" per 3.2.2

4) All concerns from Dubois & King addressed.

5) Any outstanding fees shall be paid to the Town

6) Prior to obtaining Board signature, the Applicant shall submit three (3) complete paper print plan sets and supporting documents as required in Article 3 with a letter explaining how the Applicant addressed the conditions of approval. This shall include final and complete reports for all items submitted during review for the Town of Barrington's file. The Chairman shall endorse three copies of the approved plan(s) meeting the conditions of approval ~~upon receipt of an executed bond for all improvements, excluding buildings. Upon receipt of surety to cover stabilization of the site.~~ The Town shall retain a signed and approved reproducible 11"X17", and PDF format with supporting documents for Town records. *The applicants engineer shall certify in writing the improvements have been constructed as approved prior to the issuance of a certificate of occupancy.*

General and Subsequent Conditions

#1) Where no active and substantial work, required under this approval has commenced upon the site within two years from the date the plan is signed, this approval shall expire. An extension, not to exceed one year, may be granted, by majority vote of the Board so long as it is applied for at least thirty days prior to the expiration date. The Board may grant only one such extension for any proposed site plan. All other plans must be submitted to the Board for review to ensure compliance with these and other Town ordinances. Active and substantial work is defined in this section as being the expenditure of at least 25% of the infrastructure improvements required under this approval. Infrastructure shall mean in this instance, the construction of roads, storm drains, and improvements indicated on the site plan. RSA 674:39 (Note: in both sections above, the numbered condition marked with a # and all conditions below the # are standard conditions on all or most applications of this type).

I wish you the best of luck with your project. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Marcia J. Gasses
Town Planner

cc: File

S. Diamond asked to briefly discuss one paragraph from the traffic study before the Board approves.

S. Diamond read from the traffic report that under 2021 opening year building conditions all movements exiting the project site was shown to operate at a level of service of C or better during the peak hours. S. Diamond explained that he wasn't sure what C was but thought that's starting to get some delays with a predicted vehicle queue of up to one vehicle. The build conditions traffic volumes along Route 9 (Franklin Pierce Highway) are expected to increase independent of the project and result in increased delays for motorists exiting the project site. S. Diamond explained that the increased delay was shown to result in a degradation in level of service for vehicles exiting the project site during the weekday morning peak hour from level of service C to E. S. Diamond explained that E was at capacity of the roadway and explained that was right on the verge of having a real problem. S. Diamond explained that it was true there's a variety of residential projects in the area that have been and probably will in the future be approved but this was the biggest one so this project was a significant contributor to this broader problem.

J. Brann agreed with S. Diamond and stated that if it was up to him there would be a turning lane but that's why he made the comment earlier about the Berry project. Unfortunately, as the Board saw with the Berry project, it's the NHDOT that make call for Route 9 (Franklin Pierce Highway).

J. Jennison asked J. Brann if that means that we are treading on the area of scattered and premature until the State upgrades the road.

M. Gasses explained that in peak hours you are going to have some backups, but she thinks it is NHDOT that is going to make them do a turning lane or not.

J. Brann explained that in two cases the developer wanted to put the lane in and the State said no.

M. Gasses explained that you don't want them to build for no delays because in that case there would be too much infrastructure and explained that we deal with a lot of peaks.

J. Jennison expressed that he felt this one would be worse because this one was closer to the intersection.

J. Brann expressed that theoretically he understood but in practicality trying to implement something like this [scattered and premature] in this case, he thought it was fraught with legal danger.

J. Jennison agreed with J. Brann.

S. Diamond explained that turn lanes are all important but when it comes to level of service there were concerns about traffic becoming problematic as in 15-minute delays.

A motion was made by J. Brann and seconded by J. Jennison to approve the Site Plan for 80 condo units off Franklin Pierce Highway as read by the Planning Board Chair. Vote 2/2

Roll Call:

D. Massucci-Nay

S. Diamond-Nay

J. Brann-Yay

J. Jennison-Yay

J. Jennison asked S. Diamond and D. Massucci what they needed to further the discussion.

M. Gasses explained to the Board that when an application was denied, the Board must state what section of the ordinance the applicant did not fulfill.

J. Brann expressed if the Board doesn't approve the application, it needs to specify the reason why.

S. Diamond explained that the question was if this was scattered or premature development because we know than in theory that NHDOT was supposed to make the roads the State Highway adequate to meet whatever was happening there.

J. Brann asked S. Diamond where the regulation was and asked if he could cite the specific regulation that he said this does not conform with.

S. Diamond stated that this would be State Law on scattered and premature and he would google that right now.

J. Brann explained that needs to be written in our regulations and per State Law the only thing that we can approve or disapprove things was based on our Zoning, Subdivision and Site Review Regulations.

Scott explained that he was very familiar with the term scattered and premature. Scott explained that they did a traffic study that says if that job was built today this would not be scattered and premature. That was because it meets all the warrants until a 10-year time, if that job was built today on today's traffic study and traffic counts show it's at Level C, it's fine so how can that be scattered and premature based on a 10-year projection. Scott expressed that he felt that was a tough call.

J. Brann asked S. Diamond where in the regulations was there justification for disapproving this application.

S. Diamond explained that the nature of his concern. He believes in planning into the future in a sustainable thoughtful way and 10-years or 50-years or even 100-years isn't necessarily enough; he wants us to be planning to be doing something sensible for the long term.

J. Brann explained if the Board would need to say what the applicant has failed to comply with and explained that he was having a tough time looking at the regulations to find anything.

J. Jennison explained that scattered and premature was like regional impact; it's an opinion statement of non-compliance.

S. Diamond explained that he would need to do more research to get a comprehensive answer to your and J. Brann's question on the specifics of the Town Regulations related to the State Law. S. Diamond explained that he had quickly done a search from the OSI at the NH Office of Strategic Initiatives website on law rule cases. S. Diamond read the following:

Question: Is quote scattered and premature a valid reason for a planning Board to disapprove a development proposal and the answer was yes, a determination that an application is scattered and premature can be a valid reason for denial this phrase is contained in RSA 674:36: II (a).

M. Gasses explained to S. Diamond that he would have needed to bring this up at the beginning of this application, not at the very end. M. Gasses explained to the Board if you do make another motion it would need to be a motion to reconsider and you would need to vote on it. Then you would need to make another motion to approve.

J. Jennison read from the RSA in the interest of thoroughness the authority of the Planning Board was not limited to considerations of streets within a subdivision but extended to off-site improvements and obligation necessitated by a proposed development including improvement of a public road abutting the proposed subdivision.

S. Diamond stated that he had found the relevant subdivision regulation; it's 2.5.4 that prevents scattered and premature development in the Subdivision Regulations. S. Diamond stated that it was exactly what the State Law says.

J. Brann explained that it does address scattered and premature, but the subdivision regulations, which the Planning Board adopts, also state provides against such scattered or premature subdivision of land as would involve danger or injury and health safety or prosperity by reason of lack of water supply drainage information etc. J. Brann explained that what's key there was they're saying that scattered and premature can certainly be considered but it's within the context of what impact it will have as addressed in the regulations.

J. Jennison explained that if you go to 2.5.4, it says initial findings of scattered and premature to require modifications of applications additional hearings.

A motion was made by D. Massucci and seconded by J. Brann to reconsider. Vote 3/1

Roll Call:

D. Massucci-Yay

J. Jennison-Yay

J. Brann-Yay

S. Diamond-Nay

S. Diamond explained to D. Massucci that she may have missed it, but he and J. Jennison found in Subdivision Regulations 2.54 that the Board may make certain initial findings that the proposed development is scattered and premature. They give an RSA and state the project could result in or is the development of regional impact which may lead to modification the application additional public hearings or could result in denial so we do have the authority to say no to this.

M. Gasses explained that initial findings would have been at the beginning of the whole process and stressed NHDOT was the one that dictates the access.

A motion was made by J. Brann and seconded by J. Jennison to approve the Site Plan for 80 condo units off Franklin Pierce Highway as read by the Planning Board Chair. Vote 3/1

Roll Call:

D. Massucci-Yay

S. Diamond-Nay

J. Brann-Yay

J. Jennison-Yay

The Board had a discussion on how to handle this type of case. J. Brann suggested to have a workshop at one of the Planning Board second meetings to include the Town Attorney for advice.

REPORTS FROM OTHER COMMITTEES UNFINISHED BUSINESS

J. Brann updated the Board on the Engineering Services Committee and let them know that the State threw a wrinkle into this process. J. Brann explained that as part of this process the committee, they are looking at the fee structure. The State is involved and says that towns can't use cost as the basis for selecting a particular firm. J. Brann explained that they needed to look at their services and other factors. J. Brann stated that the subcommittee would meet again on the first week of February.

S. Diamond explained that from Regional Planning that he was on the Resiliency Committee and he has been doing some research on what different Towns are doing regarding their COVID response. S. Diamond explained that at his last Strafford Planning meeting they heard from the Rep from Durham. S. Diamond expressed to the Board that Durham does enforce the mask mandate but they haven't put out any citations or issued violations. S. Diamond expressed that what Barrington could do in terms of improving response around COVID would be enforcing the State's mask mandate.

J. Jennison asked if there was legal precedent for enforcement. He understood that there was not and that was why no one enforces it.

S. Diamond expressed that his understanding was that the mask mandate can be enforced by towns but there was no State level enforcement of it.

J. Jennison stated there was a huge decision under discussion around the deliberative session regarding masks and trying to dissuade people with no mask from coming. It didn't seem like that was getting any traction from a legal standpoint.

M. Gasses explained that regarding Town Offices, if someone refuses to wear a mask we ask them to leave and if we choose, we can help them outside the building. If they don't leave, they would be trespassing.

OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD

SETTING OF DATE, TIME AND PLACE OF NEXT MEETING AND ADJOURNMENT

The next meeting will be on February 2, 2021 at 6:30 p.m. electronic meeting, no meeting place.

A motion was made by J. Jennison and second to adjourn the meeting at 8:42 p.m. Vote 4/0

Roll Call:

D. Massucci-Yay

S. Diamond-Yay

J. Jennison-Yay

J. Brann-Yay

Without objection the meeting was adjourned at 8:42 p.m.

Respectfully,

Barbara Irvine

Planning & Land Use

Administrative Assistant