



## BARRINGTON PLANNING BOARD MEETING

**NEW LOCATION: EARLY CHILDHOOD LEARNING CENTER**

**77 RAMSDELL LANE**

**Barrington, NH 03825**

**Tuesday February 16, 2016**

**6:30 p.m.**

### MINUTES

*(These minutes were approved on March 1, 2016)*

**NOTE: THESE ARE SUMMARY ACTION MINUTES ONLY. A COMPLETE COPY OF THE MEETING AUDIO IS AVAILABLE AT THE LAND USE DEPARTMENT.**

#### Members Present

Jason Pohopek Vice-Chair *(arrived at 6:40 p.m.)*

Fred Nichols

Fred Bussiere – ex- officio

#### Members Absent

Anthony Gaudiello-Chair

Joshua Bouchard

#### Alternate Members Present

Daniel Ayer

Richard Spinale

Michael Clark ex-officio

Town Planner: Marcia Gasses

*A motion was made by R. Spinale and seconded by D. Ayer for F. Nichols to chair the meeting. The motion carried unanimously.*

Jamie Jennison was introduced to the Board. Jamie had submitted an application to the selectmen for membership on the Planning Board.

### MINUTES REVIEW AND APPROVAL

1. Approval of the February 2, 2016 Meeting Minutes.

F. Nichols pointed out that at line 477 it was F. Bussiere who had made the motion.

*A motion was made by F. Bussiere and seconded by R. Spinale to approve the minutes with the change at line 477. The motion carried unanimously*

### **NON-ACTION ITEMS**

2. Bruce Mayberry of BCM Planning LLC discussed the recent [School Impact Fee Update Report](#) he completed for the Planning Board. Bruce also discussed impact fees in general and how they were derived and what they could be used for. *(See attachment)*

### **COMMUNICATIONS RECEIVED**

None

### **REPORTS FROM OTHER COMMITTEES**

M. Gasses expressed that she had been working with R. Spinale and D. Ayer on the sign regulations on Thursday mornings at 8:30.

M. Gasses expressed that F. Nichols, R. Spinale, John Huckins and herself would be attending a workshop in Concord dealing with the recent State law on accessory dwelling units that would take effect on June 1, 2017. The Board would need to propose an amendment to the Zoning Ordinance for the March 2017 Warrant.

### **UNFINISHED BUSINESS**

None

J. Pohopek assumed the chair at 6:40 p.m.

### **OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD**

3. Millo's requesting an extension to meet precedent conditions for Map 238 Lot 7. See case below. [238-7-TC-15-SR \(Millo's Pizza-George Tsoulakas\)](#)

F. Bussiere recused himself.

M. Clark to sit for F. Bussiere

John Arnold of Hinckley Allen represented the applicant. Attorney Arnold explained that they were there requesting a one- year extension to their approval. Condition #2(b) required the applicant to "Add the NHDES Non Community Public Water System Permit # to the plan. The water system was to be installed on nearby land owned by Barrington Village Place ("BVP"). The permit for the water system would be issued by DES only after the well was drilled and the water quality was tested and approved.

The Board had granted site approval to BVP for the water system on August 18, 2015. George and Arvilla Calef appealed the approval to the Barrington Zoning Board of Adjustment and to the Superior Court; both appeals were still pending. With the appeals pending, they could not move forward to drill the

well or test the water. As such they could not obtain the DES water system permit number until the appeals were resolved.

A hearing date had not been set by the court as the original date needed to be changed. If BVP prevailed construction of the well would commence. They were hopeful the process would be completed within a year.

R. Spinale asked if the stay applied to this application as well, which was why they could not put the information on the plan.

John Arnold expressed that it was not quite directly. That the Calef's had appealed the Barrington Village Place application and because that appeal had been taken they could not proceed with any work on the Barrington Village Place property, which was the drilling of the well. They could not get their number from NHDES to place on the Milo's plan.

R. Spinale asked why they thought a year would be sufficient time for everything to proceed.

John Arnold expressed it was their best judgement that things would be wrapped up in a year. He expressed he was trying to set a realistic and achievable deadline.

R. Spinale expressed there was no limit to the length of time the stay of proceedings could be in place.

John Arnold expressed the court is forced to schedule a hearing although one had not been scheduled yet. The court will hear the appeal and make a decision and provided they prevail they would go ahead and drill the well and proceed with the project.

R. Spinale asked why a stay was put in place.

John Arnold expressed that the stay was statutory when there was an appeal of a Planning Board or Zoning Board decision. There were actually two appeals; one of the Zoning Board Decision and one of the Planning Board Decision and they had now been combined and were in the process of being scheduled by the court.

R. Spinale asked why you wouldn't follow the tolling process as in the Barrington Village Place case.

John Arnold expressed that Millo's was not part of the Barrington Village Place case.

D. Ayer expressed he understood the request for one year but he wanted to make a motion to grant the extension for six months from the date of the court's order in *Calef v Town of Barrington*, Docket Nos. 219-2015-CV-00368 and 219-2015-CV-00509 becomes final or the stay is lifted, whichever occurs first.

John Arnold expressed the Board would be tying the extension to six months after a decision is made on the court cases. There was a possibility those decisions could be appealed.

D. Ayer expressed the six months would then start from when the final resolution occurred.

R. Spinale expressed that he thought that John Arnold expressed they couldn't do that.

D. Ayer expressed that the application was indirectly tied to the decisions.

J. Pohopek expressed that the letter from Jae Whitelaw should be read into the record.

M. Gasses stated the Board would need to vote to read the letter into the record.

*A motion was made by F. Nichols and seconded by R. Spinale to read the letter from Jae Whitelaw into the record. The motion carried unanimously 5-0*

J. Pohopek read the e-mail from Jae Whitelaw.

*Marcia -*

*I am writing to follow-up our telephone conversation this morning regarding John Arnold's requests for extensions of the time period within which to complete the conditions precedent in the above conditional site plan approvals. I recommend the planning board grant the extensions.*

*Barrington Village Place: The conditional site plan approval expires on February 23, 2016. The Calefs appealed the planning board's decision to the court and the ZBA, and then appealed the ZBA's decision to the court. The two appeals have been consolidated and we are waiting for a court date to present the case to the court. Pursuant to RSA 677:15, II, further proceedings on the conditional approval are stayed pending a final decision on the appeal. This means the applicant, BVP, cannot move forward with any actions based on the approval, to include meeting the conditions of approval. The legal ramifications of the stay constitute a reasonable basis for granting the extension. BVP has requested either a six month extension or confirmation that the six month time period is tolled (i.e. does not begin to run) due to the appeal. Realistically, we cannot expect a court order on the appeal until sometime this summer at the earliest. I recommend that the board extend the six month period with the following language: "The six month period to complete conditions precedent is extended until six months from the date the court's order in Calef v. Town of Barrington, Docket Nos. 219-2015-CV-00368 and 219-2015-CV-00509 becomes final or the stay is lifted, whichever occurs first."*

*Milos: The Milos conditional site plan approval also expires on February 23, 2016. One condition of approval is that the NHDES NonCommunity Public Water System Permit number be put on the plan to be recorded. That permit cannot be granted until the water system on the BVP property is drilled and tested; due to the Calef appeal that work on the BVP property is stayed. Milos is legally prevented from meeting its condition of approval within the six month period, and constitutes a reasonable basis for granting the extension. I recommend the board extend the six month period with the same language recommended for the BVP stay.*

*Please do not hesitate to call with further questions. Thanks.*

*Jae*

*J. Pohopek stated that " D. Ayer has made a motion that the six month period to complete conditions precedent is extended until six months from the date the court's order in Calef v. Town of Barrington, Docket Nos. 219-2015-CV-00368 and 219-2015-CV-00509 becomes final or the stay is lifted, whichever occurs first."*

*F. Nichols seconded the motion. The motion carried unanimously 5-0*

4. Barrington Village Place requesting an extension for Map 238, Lot 16.21. See case below.  
238-16.21-V-15-SR (Barrington Village Place)

John Arnold expressed the request was the same as for Milo's and he had nothing further to add.

R. Spinale asked if the court proceedings took more than a year would any new zoning apply.

J. Pohopek expressed that R. Spinale was asking that because the timeline was connected to the lifting of the stay or resolution of the court case that if rules changed in the meantime, would the new rules apply.

M. Gasses and D. Ayer expressed "no".

J. Pohopek agreed.

R. Spinale asked what John Arnold thought.

John Arnold expressed he could not give an answer off the top of his head without further review of the Town's regulations, but he tended to agree with what he was hearing from Jason and Marcia.

R. Spinale asked if the court lifts the stay it did not necessarily mean the issue was resolved; it just meant the court has opened it back up again.

John Arnold explained the court was going to schedule a hearing on the matter which was like a small trial and then issue a decision. Typically the stay will stay in place under the law until the decision was made.

R. Spinale expressed he did not have a problem with what was being done; he just wanted to understand what was being done.

J. Pohopek expressed he was very confident that no changes in the regulations would apply, unless they were proposing new changes to the site. If they were to propose new changes to the site they would subject themselves to new regulations.

R. Spinale concurred and expressed it was a question just to make sure he understood the process.

*A motion was made by D. Ayer and seconded by F. Nichols that the six month period to complete conditions precedent is extended until six months from the date the court's order in *Calef v. Town of Barrington*, Docket Nos. 219-2015-CV-00368 and 219-2015-CV-00509 becomes final or the stay is lifted, whichever occurs first."*

Chris Vachon asked for a clarification as to whether what the Board was doing was to be applied to all extension or just the two.

J. Pohopek expressed just the two that have been heard and cited.

*J. Pohopek called for the vote and the motion carried unanimously. 5-0*

5. Gerrior Trust requesting an extension until June 1, 2016 for Map 268, Lot 1.  
268-1& Additional Lots –GR-13-SUB (Gerrior Lane Trust)

F. Bussiere returned to the Board.

Mike Sievert of MJS Engineering represented Peter Daigle the owner of the project and Gerrior Lane Trust. Attorney Kevin Baum of the law office of Hoefle, Phoenix, Gormley and Roberts, PA was also present. Mr. Daigle had hired Attorney Baum to assist with meeting the final conditions of approval. The date to meet precedent conditions was March 1, 2016. He expressed almost all of the conditions have been met. Mr. Daigle's wife of 35 years had passed away in the last 30 days from cancer. There were 11 conditions that needed to be met. Only three of the lots needed amended state subdivision approval. There were a couple of minor legal issues which needed to be resolved, along with the bonds. He was not sure they could resolve everything by March 1<sup>st</sup>, which was why they were there.

Condition number 3 required the existing house in the right of way must be removed and the removal of the home was at odds with an agreement between Mr. Daigle and former business partner Robert Powers.

M. Gasses expressed one of the things she wanted to make clear was that she could not recommend to the Board that the condition precedent requiring removal of the house be made a condition subsequent. If the plan were to be signed with the house in the right of way, it would be in violation of the Zoning Ordinance. The house should have been taken down with the 2007 approval; there had been multiple complaints in regard to the house. She had spoken briefly with Jae Whitelaw regarding the matter.

Attorney Kevin Baum expressed they would retract their request to have the condition moved to a condition subsequent. There had been litigation between the principals of the subdivision, which did not affect the approvals but one of the agreements allowed for one of the principals and their family to reside in the home until construction began. The home happened to be right in the middle of one of the rights of way. They had made a request to tear down the house to the party and they had declined. He understood that this was an issue for the Town and they understood not making it a condition subsequent. There principal reason for being there was to get more time. The agreement was for the party to reside there and it was clear that no one was currently living in the house and with information provided that day it appeared the house had even been leased out for some time. They needed more time to resolve the issues and get the house torn down. NHDES approval should be in by the first of March. The revised subdivision had more land going to conservation and the Town and he wanted enough time to work with the Town to make sure everything is handled appropriately and the extra open space goes to the Town.

M. Gasses expressed they would also need to work with the Conservation Commission.

D. Ayer expressed he would be willing to grant a six month extension.

F. Bussiere asked for clarification on the 2007 decision. He wanted to know if the house was supposed to be removed and it was not, even though it was stated on the approval.

M. Gasses expressed that she was not aware that it was stated on the approval. That portion of the subdivision looked like the previous approval. There was probably an understanding because it was clearly in violation of the zoning ordinance but what brought it to our attention was a complaint to Tom Abbott about a septic issue and Tom could not tie the complaint to a specific map and lot because the house was in the middle of the right of way. When the applicant came back for the resubdivision we had made it very clear the house needed to be removed prior to the signing of the plan.

F. Bussiere asked what the agreement entailed.

Attorney Baum expressed the settlement agreement had allowed for the party to reside in the home with his family until financing and construction began, which was in odds with the Planning Board approval.

M. Gasses expressed that the Town had not been involved with the decision between the two parties.

*A motion was made by F. Nichols and seconded by D. Ayer to grant a six month extension.*

R. Spinale asked if the extension would be six months from March 1, 2016.

M. Gasses stated it would.

J. Pohopek called for the vote. *The motion carried unanimously 5-0*

**6.** Cases before the Board for March 1, 2016.

M. Gasses expressed there would be one 3 lot subdivision off Merry Hill Road on the agenda.

J. Pohopek expressed that Jamie Jennison was at the meeting and wanted to be a member of the Board. He had known Jamie for many years and believed he would be a great Board member and was a good person.

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

*A motion was made by D. Ayer and seconded by R. Spinale to Adjourn at 8:00 p.m. The motion carried unanimously.*

Respectfully submitted,

Marcia J. Gasses  
Town Planner and Land Use Administrator

## Impact Fees in Barrington

February 2016  
Discussion



P. O. Box 723 – Yarmouth, ME 04096  
bmayber1@maine.rr.com

Bruce C. Mayberry, Principal

February 2016

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### Impact fee principles

- ◆ Authorized (1991) by NH RSA 674:21, V
- ◆ At least 60 impact fee ordinances in NH
- ◆ Assessed to new development
- ◆ Funds capital facilities only
- ◆ Proportionate to demand
- ◆ Recoupment allowed
- ◆ Cannot be purely for “upgrades”
- ◆ Time limit on usage
- ◆ Ordinance required to enable

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## Exactions vs. impact fees

### ✓ Exactions for Off Site Improvements

- Water, sewer, drainage, highway only
- Can include “upgrades”; negotiable
- Usually for close-in improvements of specific benefit
- Authorized within subdivision regulations
- Case by case review

### ✓ Impact Fees

- Assessed to all new development
- Improvements of general benefit to new development
- Enabled by ordinance
- Pre-determined in an impact fee schedule
- Generally not negotiable though waivers may apply

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## Types of assessments

### ✓ Exactions (no ordinance required)

- Assess under subdivision, site plan regulations
- Off-site improvements related to development
- Limited to water, sewer, drainage, highways
- Authorizing language includes “upgrades”
- 6-year holding period

### ✓ Impact fees (ordinance required)

- Assess at plat, site plan approval
- If no P.B. action, at building permit
- Collection at C.O., or mutually agreeable schedule
- Fee basis cannot be for “upgrades”
- 6-year holding period

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## Using impact fees

- Maintain separate capital facility accounts
  - No “crossover” between facility categories
  
- Apply to eligible projects
  - Capacity-related capital needs
  - Match with other funds
  - Can be applied to pay debt service (recoupment)
  
- Appropriate non-impact fee funds within 6 years
  - Or refund the fee with interest
  - Same time limit applies to exactions

February 2016

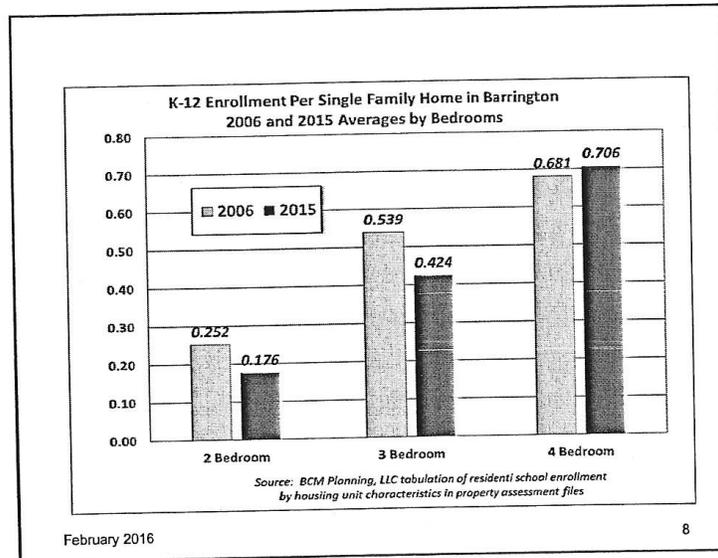
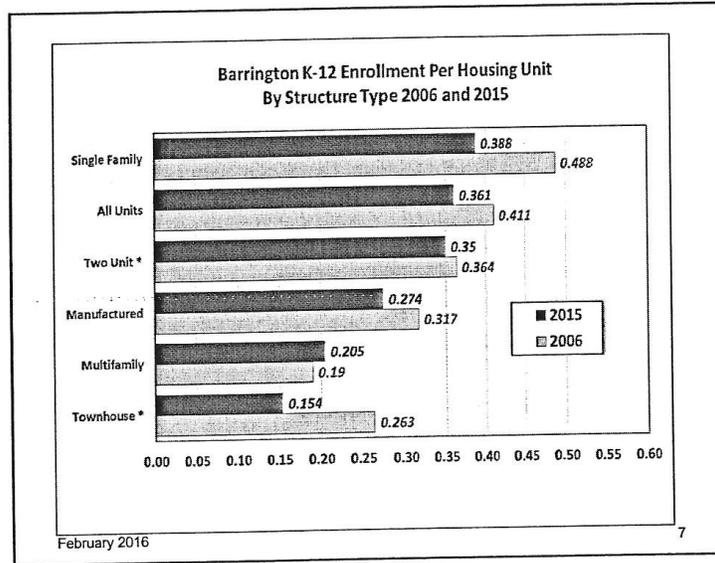
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## Barrington impact fees

- Exactions for roads used for many years
- Impact fee ordinance adopted 2001
- School fee (K-8) 2001, 2007, 2016 updates
- CIP July 2007 included review of fee potential
- Draft library fee prepared 2007
- Road improvement plan October 2009
- Road impact fee options reviewed July 2010

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Barrington School Impact Fee for Single Family Home			
Original Fee and Updates			
Impact Fee Element	2001	2007	2016
Grades in Facilities Assessed *	K-8	K-8	1-8
Enrollment Ratio (Elementary & Middle School Facilities) *	0.353	0.331	0.263
Sq. Feet Per Pupil Capacity	125	129	134
Facility Cost Per Sq. Ft.	\$133	\$160	\$208
Gross Capital Cost	\$5,869	\$6,832	\$7,330
State Building Aid *	32%	32%	30%
Net District Cost Per SF Unit	\$3,991	\$4,637	\$5,131
Credit Allowance Past	(\$148)	(\$240)	(\$358)
Credit Allowance Future	(\$632)	(\$116)	(\$138)
Impact Fee Assessment	\$3,211	\$4,281	\$4,635

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BARRINGTON SCHOOL IMPACT FEE ALTERNATIVES 2016			
Structure Type	Cost Adjustment Basis		
	NH SBA Allowable (Existing Method)	ENR-Adjusted Original Cost	CPI-Adjusted Original Cost
<b>School Development Cost/Sq. Ft.</b>	<b>\$208</b>	<b>\$182</b>	<b>\$166</b>
<b>Fee Schedule Five Structure Types</b>			
Single Family Detached	\$4,635	\$3,994	\$3,599
Townhouse (attached)	\$2,583	\$2,220	\$1,996
Duplex or 2-unit structure	\$3,966	\$3,435	\$3,107
Multifamily (3+ Units)	\$2,561	\$2,206	\$1,987
Manufactured Housing	\$3,574	\$3,104	\$2,814
<b>Fee Schedule Three Structure Types</b>			
Single Family Detached	\$4,635	\$3,994	\$3,599
Attached and 2+ More Family	\$2,660	\$2,289	\$2,061
Manufactured Housing	\$3,574	\$3,104	\$2,814

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**ENGINEERING, P.C.**  
CIVIL • STRUCTURAL • ENVIRONMENTAL

*Attachment "B"  
2/16/16*

5 Railroad Street • P. O. Box 359  
Newmarket, NH 03857  
Phone: (603) 659-4979  
Email: [mjs@mjs-engineering.com](mailto:mjs@mjs-engineering.com)

February 10, 2016

Ms. Marcia Gasses, Town Planner  
Town of Barrington, Planning Department  
P. O. Box 660  
333 Calef Highway  
Barrington, NH 03825

Re: Request for Extension  
(268-1 & Additional Lots-GR-13-SUB-Gerrior Lane Trust)  
The Homestead Subdivision  
Gerrior Drive, Saint Matthews Drive, Heritage Lane  
Barrington, NH

Dear Ms. Gasses:

Pursuant to your request, I will summarize the status of the precedent conditions listed as items 1-11 on the March 11, 2015 Notice of Decision (the "NOD") conditionally approving the above-referenced Subdivision. The status of these conditions are summarized below:

1. Plan Modifications. With respect to Condition 1(a), NHDES completed a site visit on or about February 9, 2016. DES requested that we reflag the test pits, which will occur on February 11, 2016. We anticipate a decision shortly. The plan modifications requested as conditions 1(b)-(e) have been completed and revised plans were submitted to you on February 11, 2016.
2. The plan notes requested as conditions 2(a)-(d) have been completed and revised plans were submitted to you on February 11, 2016.
3. Due to litigation between the current and former principals of the developer, the existing building located in the right of way cannot be removed until the project is complete and construction begins. We, therefore, respectfully request that this condition be made a condition subsequent. The demolition is included in the cost estimates submitted to you on February 10, 2016 and we anticipate that they will be included in the determination of any performance guaranty.
4. Doucet Survey has been authorized to complete the survey monumentation listed in item 4 and this should be complete by 3/1.

5. The law office of Hoefle, Phoenix, Gormley & Roberts, PA has been engaged to complete the required revised Homeowners Association documents and easement for the shared driveway listed in items 5&9.

6. Costs estimates for determination of the amount and type of performance guaranty were submitted to you on February 11, 2016.

7. The outstanding fees have all been paid.

8. The required note has been added to sheet MPP.

9. Please refer to number 5 above.

10. Back taxes will be paid before March 1, 2016.

11. Complete plan sets will be submitted upon the completion of the conditions of approval.

We apologize for the delay in completing the precedent conditions. During the past year, the developer Peter Daigle has been dealing with the long term illness of his wife of 35 years, who passed away on January 15, 2016 due to cancer. During the month of February, Peter's staff at his office, MJS Engineering and the attorney's have worked hard to finalize everything for completion. Due to all of the work over the years and the ongoing efforts this last month, I respectfully ask the Board to grant a 3 month extension to complete the precedent conditions and to make condition number 3 a subsequent condition.

Please call me at (603)659-4979 with any questions or request for additional information.

Sincerely,



Michael Sievert, P.E.  
President

Cc: Peter Daigle, Gerrior Lane Trust  
Kevin Baum, HPGR, P.A.