

NEEDHAM PLANNING BOARD MINUTES

November 8, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Paul Alpert, Chairman, on Monday, November 8, 2021, at 7:00 p.m. with Messrs. Jacobs and Block and Ms. McKnight, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Mr. Alpert took a roll call attendance of the Board members and staff. He noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video conference. He reviewed the rules of conduct for zoom meetings. He noted this meeting does not include any public hearings so there will be no public comment allowed. If any votes are taken at the meeting the vote will be conducted by roll call. All supporting materials are posted on the town's website. He noted the Board will take a vote to go into Executive session. After the Executive session the Board will vote to adjourn the meeting.

Vote to increase Project Peer Review Fee: Major Project Site Plan: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28, Needham, MA, Petitioner (Property located at 1688 Central Avenue, Needham, MA).

Mr. Alpert turned this item over to Mr. Block to Chair. Mr. Block stated there is a \$5,100 increase for the GPI peer review due to more meetings than originally anticipated and an additional traffic review. There was communication from the applicant that they are not going to pay that \$5,100. The Board needs to discuss this and see what remedies and what obligations we have to inform the applicant how much is spent to date and to provide an estimate to complete this work. Ms. Newman stated the Planning Board gives written notice of the selection of an outside consultant and the fee to be charged and gets a check for the fees in its entirety. The Planning Board can increase fees after notice to the applicant. Failure by the applicant to pay can be a cause for the Planning Board to deny the application.

Mr. Block asked if there have been projects when outside experts have been used rather than our own experts. Ms. Newman stated there have been outside experts hired for some projects the Board thinks are necessary i.e.: the Children's Hospital. The Board members all felt they needed the extra expertise on this project. All agreed a third-party independent review was necessary. Mr. Alpert stated his recollection is part of the reason for the independent review was because some neighbors raised a concern that, given the applicant's status as a company managed by the Chair of the Select Board, there was concern regarding the independence of the town employees to review the traffic study. He noted Mr. Jacobs requested an outside peer review. Mr. Jacobs confirmed that and noted that was a concern of his.

Mr. Block asked how much of the \$5,100 is for additional meetings. Ms. Newman noted there are at least 3 additional meetings. Mr. Block asked if they have spent that much to date. Ms. Newman noted they are at the end of the funds available as of the last meeting. There needs to be an add on to the contract. If there are fewer meetings the money will be returned. Mr. Block clarified this money is for future work. Mr. Alpert asked if it is in GPI's contract that they can stop working. The town has a contract and GPI has agreed to a certain obligation under the contract. GPI is asking the Board to amend the contract to increase the fee. Mr. Alpert said he needs to review the contract and is not prepared to vote tonight.

Mr. Alpert noted Attorney Evans Huber emailed this afternoon and that is part of the public record. He raises 2 objections to increasing the fee. 1) GPI exceeded the scope of their authority on the peer review of traffic study and they also reviewed the engineering plans. This raised questions that had nothing to do with the traffic. He is concerned the Town Engineer did not do that work and GPI did. He feels GPI did go beyond the scope. 2) GPI is billing by the hour and spends time at meetings where other than traffic was discussed. Mr. Alpert stated he is not sympathetic to that. The contract needs to be reviewed and the developer needs to find a way to pay for extra time if needed. He noted the developer paid \$1.25 million for the project site and will pay another \$1.5 to \$2 million dollars for the project and they are quibbling over \$15,000 extra in fees. He finds that disturbing since it is a relatively small amount.

Ms. McKnight noted the engineering department reviewed the overall drainage and gave an opinion. GPI's input had to do with the driveway and traffic concerns. She feels all those comments were within the framework of traffic. Mr. Jacobs stated he had read Mr. Huber's letter and he makes some interesting points. The Board does not need to make a decision

tonight. Mr. Block stated it is in everyone's interest to have GPI present at the next meeting. The Planning Director needs to make GPI aware they should be present. Ms. Newman stated there is no money to pay them. Ms. McKnight stated it is uncalled for that Mr. Huber's client will not pay for this. The neighbor's comments alleged a lack of faith in the developers traffic studies. The only way to assuage is to have an independent consultant and to satisfy the Board. She commented it is unbelievable the cost is being objected to.

Ms. Newman stated Children's Hospital was going to go over budget, and she had to amend their contract. The scope has changed and there is additional work. There needs to be a new scope of work and the contract needs to be amended. Mr. Block stated all members should review the contract. He wants to see if there is work not contemplated in the original scope. Mr. Alpert asked Ms. Newman to send copies of the contract to all 4 members and to Mr. Heep. He would ask Mr. Heep to look at the rules of the Planning Board regarding this so if the developer refuses to pay it does the Board have any remedies against the developer. Could the Planning Board go to the Town Manager to see if there are funds? Mr. Block stated there are 2 options – if the applicant refuses to pay, they have the legal authority to deny the application or effectively pay for this in a request to the Finance Committee. Mr. Heep stated a refusal to pay fees would be the basis to deny. It is never a good practice to incur fees from a developer without getting the money in advance. The Planning Board is in a good position to get the funds from the developer. Ms. McKnight asked if the original contract with GPI requires them to continue working until the Board is satisfied the job is done. Is there an unforeseen circumstance clause?

A motion was made to demand additional money to be paid by the developer unless, after review of the contract with GPI, it is clear the Board has the right to demand work be done free of charge by GPI. Mr. Alpert asked Mr. Heep to send the citation of the state law. Mr. Heep stated state law authorizes the Town to adopt the regulation. Mr. Jacobs suggested amending the motion to say the Planning Board, after discussion, decides the Planning Board's sense is to not proceed further in this hearing without the services of GPI. The proposed amended contract with GPI is reasonable and the Planning Board will not proceed with this hearing until such time as satisfactory payment has been secured for the payment of GPIs amended contract. Ms. McKnight stated this does not address the opportunity to have GPI do the work under the price quoted. She is concerned with any further delays. Mr. Jacobs withdrew his amendment.

Upon a motion made by Ms. McKnight, and seconded by Mr. Alpert, it was by a roll call vote of the four members present unanimously:

VOTED: to demand additional money to be paid by the developer unless, after review of the contract with GPI, it is clear the Board has the right to demand work be done free of charge by GPI.

Mr. Alpert noted the Board will proceed to Executive session. He noted all members need to be in a secure location. Mr. Block took a poll of all to be sure of their secure location. Mr. Alpert asked Mr. Heep to explain why the Board has the ability to go into Executive session and why there will be an Executive session and not an open meeting. Mr. Heep stated one reason for Executive session is to discuss complaints brought against the Board. There was an open meeting law complaint for the 10/19/21 meeting. It is not a legal requirement to go into Executive session but possible under the open meeting law. The Board needs to announce before going into executive session if they will return or not.

Mr. Jacobs stated it should be included in the motion the Board does intend to return to open session and they will not discuss the executive session. Ms. McKnight agreed. Mr. Alpert stated he is in favor of including that the adjournment of the executive session will be the end of the open meeting. Mr. Block is inclined to return to the open session.

Upon a motion made by Mr. Alpert, and seconded by Ms. McKnight, it was by a roll call vote of the four members present unanimously:

VOTED: to note the Planning Board shall enter into executive session at 8:00 p.m. under MGL Ch. 30A, Section 21(a)(1) to discuss the open meeting law complaint filed by Mr. Abruzese alleging the Planning Board violated the open meeting law and to vote on response to same and allow Planning Director Ms. Newman, Assistant Planner Ms. Clee, Notetaker Ms. Kalinowski and Town Counsel Mr. Heep to attend the executive session and to return to open session after.

The Planning Board adjourned the Executive Session and returned to the regular meeting of the Planning Board at 9:30 p.m.

Upon a motion made by Ms. McKnight, and seconded by Mr. Jacobs, it was by a roll call vote of the four members present unanimously:

VOTED: to adjourn the open session meeting at 9:30 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Adam Block, Vice-Chairman and Clerk