

HILLSBOROUGH CONSERVATION COMMISSION
April 12, 2016 – 6:45 PM – During Selectboard Meeting
Hillsborough Town Office
Approved Minutes

Present: Commissioners: Brett Cherrington, Chair; Linda White; Richard Head; Ann Ford, Alternate.
John P. Segedy, Recording Secretary & Alternate; Laura Buono, Town Administrator
Hillsborough Selectboard: David Fullerton; Alan Urquhardt, Chair; James Bailey.
Michael Pon, The Villager; Joyce Bosse, The Messenger

At approximately 6:50 Alan Urquhardt, Selectboard Chair called on the Conservation Commission.

Brett Cherrington asked to have Richard Head speak first and then he would speak afterwards. Richard Head thanked the Selectboard for hearing them. He began by explaining they were addressing the issue of the Weatherstone Crossing and the Land Use Change Tax. Richard Head clarified that he was not taking a position on the project and that the Conservation Commission has not taken a position either. He said he wanted to express concerns with the abatement that was granted by the Selectboard at their meeting just before Town Meeting. Richard said it was an issue between the Selectboard and Town Counsel and that he wasn't providing legal advice but did want to run through the statutes and explain why there are some problems or issues with the abatement.

Richard Head provided copies of the statutes he was referencing to the Selectboard and began explaining that RSA 76:16 was the statute used for normal abatement of property taxes and that it had the language “for good cause shown”.

Richard Head then proceeded to discuss RSA 79-A:7 which deals with the Land Use Change Tax and how this statute is very explicit using the word “shall” and that it is the change of use that is subject to the tax. He noted the statute says that the property tax exemptions shall not apply and that no person or entity shall be exempt from the Land Use Change Tax.

Richard Head then discussed the section of the statute (RSA 79-A:10) dealing with abatement of the Land Use Change Tax. He noted that an abatement has to happen after the tax is imposed which hasn't happened yet. He continued by distinguishing this abatement procedure from the property tax one (RSA 76) because it doesn't have the wording “for good cause shown”. He further asked that the standard to be used be discussed with town counsel as it appears that it is pure math that would be the reason for abatement of the Land Use Change Tax. Richard further discussed the fact that it wasn't clear what standard was applied in abating this tax, and also doesn't give notice in the future for other taxpayers who may wish to have their tax abated.

Alan Urquhardt then asked Brett Cherrington to speak.

Brett Cherrington thanked Richard, and said his own comments were more related to the process. He provided copies of his comments to the Selectboard. (See Appendix).

Brett Cherrington started by saying that when he referred to the Selectboard he was referring to the Board that existed previously and that Dave Fullerton was not on the Board at that time. He then outlined the time-line of how he and the Conservation Commission found out about the issue. He said that the Conservation Commission at its March 17th meeting discussed and was not in favor of abating the Land Use Change Tax in order to make Mr. Blacks numbers work. He then started to explain the situation as he saw it.

Alan Urquhardt asked if these comments had been discussed by the Commission.

Brett Cherrington clarified that many of them had been discussed but that he was speaking as a member of the public who was also a Chair of the Commission.

Alan Urquhardt said he was not going to listen to all of them being read and that they would read them and take them under consideration.

Brett Cherrington asked that his comments be included in the minutes in their entirety.

Alan Urquhardt said that was up to the Selectmen to decide.

Dave Fullerton said he wanted to read them before including them in the minutes.

Dave Fullerton said he believes that one of the concerns of the Conservation Commission is they believe they are losing money by this.

Alan Urquhardt said I don't think we are going to go that route.

Dave Fullerton said he thought that should be noted.

Alan Urquhardt said there are 96 acres to be considered also.

Laura Buono provided a handout on the estimation of value of the developed and donated land,

Brett Cherrington asked that the other members of the Commission be given a chance to speak also.

Alan Urquhardt said that if you want to come before us (Selectboard), you should have one or two speakers. I can't sit here all night when I have an agenda that is full and I have to go back to another meeting tonight.

Laura Buono asked if there was a vote of the Commission.

Brett Cherrington said that the Commission's concern was the waiver of the Land Use Change Tax which had been discussed including many of the issues in my statement and that it was the consensus of the Commission that it not be included in any measures that were taken to make Mr. Blacks numbers work.

Alan Urquhardt said they would take it under advisement. Laura Buono said they could also talk to town counsel.

Laura Buono said that even though the abatement has to happen after it's assessed the Selectmen do have the right to make agreements. She noted that communities do this all the time. She said that town counsel has been involved throughout the process.

Richard Head said he appreciates the authority over the phased in property tax but that his comments were specific to the Land Use Change Tax and that though he understands the Selectmen's general authority it is limited to what the statute says. He said he could find nothing in the statute that authorizes the accepting of the land being put in conservation in exchange for the Land Use Change Tax or that there had been consideration of the land being put in conservation for mitigation of wetlands being impacted or for allowing cluster development.

Laura Buono said she would bring the issues to town counsel.

Richard Head said he would be willing to speak to town counsel himself if they wanted.

Jim Bailey said they would talk to town counsel and take it from there.

Brett Cherrington said that he wanted to clarify that he was not speaking against the project but his comments were directed at the process and lack of communication.

John Segedy said that as minute taker he believes that 99% of the issues addressed in Brett's comments were discussed by the Commission and there was a definite consensus with no objection from any

Commissioner for Brett to put it into words and that having read it while waiting for the Selectboard to come out of non-public session, that it is a fair and accurate statement of the Commissions position. John Segedy said that regarding the 96 acres it is important to note that much of that land is being given as mitigation of wetland uses and cluster development. Alan Urquhardt said we're not going to discuss that.

Michael Pon asked if this would be on the agenda at the next meeting?
Alan Urquhardt answered yes.

ADJOURNMENT

Brett Cherrington, Linda White and Ann Ford left the meeting, effectively adjourning the Conservation Commission meeting at 7:20pm.

Respectfully Submitted:

John P. Segedy
Recording Secretary
Approved April 21, 2016

Appendix:

Comments to the Hillsborough NH Selectboard April 12th, 2016 by Brett Cherrington chair of the Hillsborough Conservation Commission

I would like to start by stating that when I refer to the Selectboard I am generally referring to the board that was then chaired by Wendy Brien-Baker who is no longer in office, and that David Fullerton who now sits on the Selectboard was not in office at that time.

After reading a letter to the editor of the Villager newspaper by Peter Mellen on March 4th which informed the public that the Selectboard and town administration at their meeting of February 16th, publicly discussed measures that they were willing to take to aid Michael Black's efforts to "*make the numbers work*" for his Weatherstone Crossing project, I brought the issue before the Conservation Commission at our next meeting on March 17th. At that meeting, the Conservation Commission discussed the inclusion in those measures the waiver of the Land Use Change Tax. The consensus of the Commission was that the Land Use Change Tax should not be included in any measures the town might take in an effort to make Mr. Black's "numbers work".

There are a few issues that I would like to personally address regarding this situation.

First is the lack of communication on the matter from the Selectboard and administration to the Conservation Commission. Communication, or the lack thereof, was a primary reason the Selectboard and administration had given for their attempt to abolish the Water and Sewer Commission. This was made apparent by the letter to the editor in the same March 4th newspaper by Town Administrator Laura Buono, regarding that proposal "*This will enable better communication between all Town departments and foster cooperation for future projects and growth management*".

One might assume that open communication with town boards, on matters that affect them, would be a priority. Sadly this did not happen. In reality, after Mr. Mellen's letter appeared, but before the next Conservation Commission meeting occurred, the Selectboard met, just prior to town meeting, on March 8th and approved the waiver of the Land Use Change Tax without consulting or even informing the Conservation Commission of their intentions.

Perhaps the Selectboard was unaware of the connection between the Land Use Change Tax and Conservation Fund revenues. The reason the Land Use Change Tax is of significant importance to the Conservation Commission is because the Commission's only source of significant funding for its Conservation Fund is from its percentage due from those Land Use Change Taxes. Waiving the Land Use Change Tax, especially for such a large project, greatly diminishes the ability of the Conservation Commission to accomplish projects such as the acquisition of Conservation Land abutting the River Walk and Grimes field that we procured last year.

At that February 16th meeting, Ms. Buono referred to a Weatherstone Crossing Conservation Easement (details of which have not been disclosed to the Conservation Commission) saying “*he (Mr. Black) may be approaching the board at the time the Current Use penalty is assessed, in exchange he is putting, **giving*** us a Conservation Easement, a considerable Conservation Easement.*” Does the Selectboard know that a portion of the Conservation Easement he is “giving us” is likely going to be required by the Department of Environmental Services as mitigation for environmental impacts including the destruction of approximately two and a half acres of wetland, and that much of it will be located along the North Branch River in an area of limited development value due to the Shoreland Water Quality Protection Act (TITLE L Water Management and Protection CHAPTER 483-B)?

Is the Selectboard aware that a residential cluster development is part of the overall plan, and that Hillsborough's Cluster Development Ordinance (Article XIV) (Section I) requires that “*There shall be a minimum of 50% of the total land area of the parcel dedicated as common open space, which shall be restricted...*” including (Item 3) “*The common open space shall be **deeded*** either to the homeowners' association, or may be **deeded*** to the Town or conservation organization...*”

These two items, the DES mitigation plan and the Cluster Development Ordinance diminishes the land likely to be put into a Conservation Easement by **gift**, which is one rational provided for the Property Tax phased abatement plan and the waiver of the Land Use Change Tax.

While it is true that in Hillsborough, as in virtually every other town, keeping the tax burden as low as possible is seen as a primary goal, abating and waiving taxes on developers robs the general fund of income which would aid in keeping local tax payers tax burden as low as possible. By publicly announcing that the town of Hillsborough is willing to cave in to Mr. Black's demands the Selectboard is providing developers with *carte blanche* to demand whatever they want from Hillsborough to get their development in town. At the same February 16th Selectboard meeting referring to both the Land Use Change Tax waiver and the Property Tax proposed phased abatement plan, Selectman Urquart asked, “Are the numbers going to work if we go along with this other thing, the five year (tax abatement) plan?”. Administrator Buono replied, “I think it's going to help considerably”. Chair Brien-Baker said “I don't want it held up any longer” and Selectman Bailey added, “we need the business”, “anything we can do to promote the development, I mean that's what we're all here for”, “sometimes you have to bite the bullet”. One might ask, did the Selectboard have any idea what size bullet they were biting? Did they even know approximately how much revenue they were giving up to Mr. Black?

Is this type of telegraphing of our intentions in the best interests of our taxpayers? Does the Selectboard know what the requirements are for the “numbers to work”? Is there a disclosed accounting of these numbers? Or, is the town simply taking Mr. Black's word for it? And if the numbers are so hard to make work, is this development really viable? Are we in danger of having a vacant building when a business that has marginal “numbers” can't make it work and pulls out of Hillsborough?

All of that said, there are a few items that bring into question the legality of the actions of the Selectboard. It is not clear that the Selectboard had the legal right to either abate the Property Tax without violating the Weatherstone Site Plan approval, or to waive the Land Use Change Tax at all.

In the notes section of the Weatherstone Crossing Plan 2/25/15, number 9 states that “*prior to the start of construction, the contractor shall coordinate with the engineer, architect and/or owner, in order to obtain and/or pay all the necessary local permits, fees, and bonds.*” And unless there was a change I am not aware of, the

Weatherstone Crossing Site Plan Approval states “16. Prior to commencing construction, Applicant agrees to pay all fees as required by all ordinances and regulations of the Town in effect at the time of this approval.”

The legality of the waiver of the Land Use Change Tax is questionable based on state law. **Title V Taxation. Chapter 79-A:7 Land Use Change Tax**, states that “*The tax imposed by this section is a tax on the change of use of the land and not a tax on the land itself. The property tax exemptions under RSA 72:23 shall not apply to the land use change tax and **no person or entity shall be exempt from payment of the land use change tax.***”*

Given my statements herein, I request that the Selectboard reconsider their decision to waive the Land Use Change Tax and to have town counsel 1) review the legality of the Land Use Change Tax waiver, and 2) review the Planning Board's documents regarding this project focusing in particular on fee payment requirements agreed to as conditions for approval. I further request that the Selectboard provide the Conservation Commission details regarding any Conservation Easement on the project as they become available.

Respectfully,

Brett Cherrington
Hillsborough Conservation Commission, chair

*emphasis mine