

MEMORANDUM

To: Don Spann, Chairman
Planning Board

From: Rod Melanson, Director of Planning
Andrew H. Deci, Assistant Planner

Date: July 15, 2020

Re: Crooker Rezoning – Process Facilitation/Administrative Issues to Consider

As we endeavor to understand the applicant's request and the concerns of the neighborhood residents associated with the Crooker proposal, it is important to explicitly consider the way in which the Board will conduct its activities. We have assembled this memo to explain our perspective on the process and considerations the Board should make over the coming months, especially as it relates to facilitating a transparent and respectful process amongst a number of stakeholders.

Process

The applicant-landowner has proposed working with the Board to develop a new use and/or zoning district, and the accompanying performance standards, in order to bring an ordinance to Town Meeting and facilitate their relocation efforts. To start this process, the applicant has proposed a work plan to guide the coming month's meetings and focus the conversation.

The Board should consider this proposed schedule as a framework—certainly, specific topics may require more research or discussion than the schedule affords. The Planning Board should feel empowered to require additional meetings, reports, studies, or time to cause an informed decision.

Our expectation is that over the course of several months, an ordinance proposal will be developed by the applicant-landowner based on the input of the Board, considering the interests of the general public and other stakeholders. The participation in and guiding of the development of the ordinance language is not an affirmation of the Board's concept of comp plan consistency or intended recommendation to Town Meeting. Those specific and legal decisions would be made after a legal public hearing is held on the finalized ordinance language.

It is quite possible that the Board engages and works on a proposal with the applicant-landowner, only to determine that the proposal is inconsistent with Topsham's plans or that the project is not appropriate for the community. From our staff perspective, regardless of any individual Board member's opinion on consistency, it is in the general interest of the community to fully participate in the discussions and development of draft ordinance language.

The applicant-landowner, if not supported by the Board, may choose to seek initiation from the Select Board or via a petition—without the contributions of the general public or

guidance of the Planning Board—perhaps yielding a less community-oriented set of performance standards without the contributions of our community’s land use experts (the Planning Board!) or general public.

Workshop Procedures

Different than a formal meeting, Board workshops are casual, non-binding meetings wherein there is free discussion between the Board and the applicant-landowner. Formal decisions cannot be made in workshop—they must be advertised, heard, etc. As such, the role of the public is less clear in code and general practice. As we briefly discussed in June, the Board should permit focused comments to be heard from anyone interested at *each* workshop.

In the past, workshops have generally not been televised or recorded. Given the virtual meeting format and the interest that this proposal has within the community, we intend to record the workshops and have them available for review on the website. This will be beneficial for all stakeholders. Additionally, we anticipate having ‘notes’ taken by Patty Williams (Recording Secretary), in order to have both a better record of the discussions and to clearly indicate who has been heard from.

The Board should agree on a general format for the workshops. From our staff perspective, we suggest holding a public comment listening session at the beginning of each workshop, prior to engaging directly with the applicant-landowner on the substance of the meeting. The Board can (*and should!*) limit comments to the subjects and issues at-hand—either the topics just reviewed and discussed at the previous meeting or the topics that will be discussed that night. Constraining public comments to a certain time limit may also be considered, in order to facilitate hearing from all interested citizens and *also* allowing time for work with the applicant-landowner.

If the Board is interested in modifying the existing by-laws or otherwise establishing specific ‘rules’ or guidelines for the workshops or public comments in order to maintain a respectful and productive process, the issue should be discussed at the upcoming meeting and set forth for everyone (including the public) to understand and follow.

Public Comments and Ex-Parte Communication

As this is a legislative task, the prohibitions on ex-parte communication during development review activities *do not* apply—as Board members you *may* converse with one another, the applicant, the public, staff, and other decision makers in order to inform your thoughts and decisions.

However, it may be advantageous to commit to directing comments through the Planning Department so that they are logged and made available to everyone for consideration. From a staff perspective, we see this as facilitating a transparent process—wherein all of the Board has the same set of facts to form a judgment. This should be discussed as a group, and if there is a consensus, adopted and performed by each member.

We are currently requesting comments to be submitted by email (planning@topshammaine.com) in *advance* of workshop dates. On a weekly basis, we are collating the comments and posting them to the website for everyone's review and consideration. If the Board would like to adjust the way comments are received, please let staff know.

Other Stakeholders

As the process unfolds, the Board may want to request the participation or opinions of other Town committees (Select Board, TDI, TCC, etc.) and/or state or federal agencies. As necessary, the Planning Board could request the attendance of a representative of the committee/agency or group at a particular workshop session or send the applicant to discuss the project with them. If you are interested in hearing from a particular individual or group, please let staff know in advance so that we can invite them and ensure their participation.

Roles and Expectations

This process is predicated on a number of stakeholders working well together: the Planning Board, the applicant-landowner (and their consultants), project abutters and neighborhood residents, the general public, and other decisionmakers and town committees (BOS, TDI, TCC). As a starting point for a conversation, here are staff's perspectives on the roles and expectations for each major stakeholder group:

- Applicant-landowner
 - Owns the ordinance amendment request
 - Facilitates the discussions at each workshop, focused on the topic scheduled for the evening
 - Develops ordinance proposals and language for consideration and comment by the Board (and others, as directed by the PB)
 - Provides meeting materials and requested documents in a timely manner
- Planning Board (PB)
 - Reviews and considers all submitted applicant-landowner materials and public comments; elevates identified questions, comments, or issues for consideration by the Board, applicant-landowner, and staff
 - Engages and provides direction to the applicant-landowner on preferred ordinance language
 - Initiates zoning amendment process per §225-79
 - May make a recommendation to Town Meeting, indicating compliance with the comprehensive plan
- Planning Staff
 - Manages the administrative functions associated with the project (agendas, notifications, receipt of comments, etc.), including a clearinghouse website with all associated materials
 - As directed by the PB, provides technical and professional advice to the Board

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- As directed by the PB, conducts research and gathers information based on specific questions of the Board
- Provides responses to the public on matters of process
- Coordinates submissions of the applicant