

Planning Board Dec. 12, 2013

Members Present: Barry Hantman-Chairman, Chip Current, Haeyoon Jacobus, George Manos, John Russo, Chris Giordano-Selectmen's Representative, Janet Denison-clerk

Others Present: Carsten Springer, Cliff Sinnott, Glenn Coppelman, Dylan Smith, Phil Emilio

Haeyoon had advised the Board she had a prior commitment and arrived at 9:00pm.

Minutes

Minutes of November 14, 2013 were reviewed and corrections were made. Chip made and Chris seconded a **motion to approve the November 14, 2013 minutes as amended**. The motion **passed** unanimously.

Citizen's Petition Warrant Article

A zoning amendment involving the fire suppression ordinance was submitted via citizen's petition. The signatures have been verified by the Town Clerk and there is an adequate number of registered voters in Danville. Peter Loughlin has been asked to verify the validity of the petition and he confirmed it should be put forward to a public hearing and the ballot. Chris made and Chip seconded a **motion to hold the public hearing January 9, 2014 at 7:40pm**. The motion **passed** unanimously. After the hearing the Board will add their vote of recommendation.

Barry added that the State Fire Marshall has reviewed Danville's fire suppression ordinance and has concluded it is valid and enforceable. That portion of the Zoning Ordinance was put in place before HB-278 was enacted.

Correspondence

- Public hearing notice from Deerfield
- A pamphlet titled "The Real Facts" dealing with the Granite State Future
- A letter dated November 19, 2013 from Sherrie Trefry, addressed to Carsten Springer

Other Business

The Master Plan and Capital Improvement Plan will be addressed at the first meeting in 2014. Chip was advised to update the CIP spreadsheet. It was agreed that Barry will write the 2013 report for inclusion in the Town Reports.

Warrant Article review

The Board reviewed the following amendments to the Zoning Ordinance for inclusion in the 2014 ballot.

Second public hearing for Zoning Article #10

Barry reminded the members that this is the second hearing and no substantive changes can be made to the proposed amendment. The article was reviewed as written below.

Zoning Article #10

To see if the Town of Danville will vote to approve a change to Article XIV of the Danville Zoning Ordinance which would expand the list of public facilities for which impact fees associated with new development can be assessed to include: municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; public road systems and rights-of-way; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; public recreation facilities, not including public open space; water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; and storm water, drainage and flood control facilities. Specifically, this would replace Article XIV, *Impact Fee Ordinance*, with the following:

ARTICLE XIV
Impact Fee Ordinance

A. APPLICABILITY AND PURPOSE

The following regulations shall govern the assessment of impact fees to new development for their proportionate demand on public capital facilities. These regulations are authorized by RSA 674:21, V, and other pertinent state law, as an innovative land use control.

The public facilities for which impact fees may be assessed in Danville include municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; public road systems and rights-of-way; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; public recreation facilities, not including public open space; water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; and storm water, drainage and flood control facilities.

The purpose of this Article is to:

1. Assist in the implementation of the Master Plan and Capital Improvements Program;
2. Enable the Town of Danville to assess an equitable share of the cost of public capital facilities to new development in proportion to its demand on capital facilities; and
3. Provide authority to the Planning Board to adopt appropriate methods to support proportionate impact fee assessments, and to provide for the administration thereof.

B. DEFINITIONS

1. Assessed property means any land or buildings comprising new development that are subject to an impact fee assessment under this article.
2. Assessment with respect to an impact fee means a notification issued by the Town of Danville, its Board of Selectmen, its Planning Board, or its Building Inspector, stating the amount of the impact fees due for an assessed property,

and the schedule for its collection. Such notification may come as part of planning board approval in accordance with Section XIV.C.4 of this ordinance and does not require separate, written notification.

3. Collection with respect to an impact fee means the actual delivery of payment of the fee to the Town of Danville on behalf of an assessed property.
4. School District means the Timberlane Regional School District, of which Danville is a member municipality.
5. Fee payer means the applicant for the issuance of a building permit which could create new development.
6. New development, for the purpose of impact fee assessment, includes the following land use changes:
 - a. The construction of any new dwelling unit; or
 - b. Changes to an existing structure that would result in a net increase in the number of dwelling units; or
 - c. Construction of a new commercial/industrial building or any net increase in the gross floor area of an existing commercial/industrial building; or
 - d. The conversion of an existing use to another use that is determined by the Planning Board to result in a measurable net increase in the demand on the public capital facilities that are the subject of impact fee assessment; however,
 - e. New development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.
7. Off-site improvements means highway, drainage, sewer and water upgrades or improvements that are necessitated by a development but which are located outside the boundaries of the property, as determined by the Planning Board during the course of subdivision plat or site plan approval.

C. IMPOSITION OF IMPACT FEES

1. The Planning Board is hereby authorized to assess impact fees in accordance with the standards set forth in this Article. The Planning Board shall have the authority to adopt regulations to implement the provisions of this Article and to delegate the administrative functions of impact fee assessment, collection and disbursement as necessary.

2. Impact fees may be assessed to new development to compensate the Town of Danville or the School District for the proportional share of capital facility costs associated with new development in Danville.
3. Any person or commercial entity who seeks a building permit for new development is hereby required to pay impact fees in accordance with the specific impact fee schedules adopted by the Planning Board, subject to the procedures and conditions established in this article.
4. Impact Fees are assessed at the time of Planning Board approval of a subdivision plat or site plan. Unless specifically stated otherwise at time of approval, the assessed amount shall be in accordance with the impact fee schedule in force at the time of approval.

D. COMPUTATION OF IMPACT FEE

1. The amount of each impact fee shall be assessed in accordance with written procedures or methodologies adopted and amended by the Planning Board for the purpose of capital facility impact fee assessment in Danville. These methodologies shall set forth the assumptions and formulas comprising the basis for impact fee assessment, and shall include documentation of the procedures and calculations used to establish impact fee schedules. Such documentation shall be available for public inspection in the municipal office of the Town of Danville.
2. Impact fees will not exceed the costs of:
 - a. A share of the cost of planned public capital facilities, based on the proportionate demand on such facilities from new development; and/or
 - b. Compensating the Town of Danville and/or the School District for a proportionate share of facility capacity that was provided in anticipation of new development.
3. The Planning Board may prepare, adopt, or amend studies, reports, or cost allocation procedures that are consistent with the above standards, and which define a basis for impact fee assessment for public capital facilities, and the impact fee assessment schedules thereof.
4. No methodology, cost allocation procedure, or other basis of assessment, nor related impact fee schedules, or changes in the basis of assessment or the fee schedules, shall become effective until it shall have been the subject of a public hearing before the Planning Board.
5. In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessed for the new use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of this Ordinance.

E. WAIVER OF IMPACT FEES

1. A person or commercial entity may request a full or partial waiver of school facility impact fees for residential uses in which all or a portion of the units will be lawfully restricted to persons age 55 and over, and where such restriction will be maintained for a period of at least 20 years. School impact fees may, in the discretion of the Planning Board, be waived for those units within a development that are so restricted in a lawful manner that is satisfactory to the Planning Board.
2. A person or commercial entity may request from the Planning Board a full or partial waiver of impact fees for development approved for construction prior to the effective date of an impact fee schedule adopted under this article if such development is entitled to the five year exemption provided by RSA 674:39. This waiver shall not be applicable to phases of a development in which active and substantial development, building and construction has not yet occurred in the phase in the development is be constructed.
3. The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that involves a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Board of Selectmen for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers of impact fees may not be based on the value of exactions for off-site improvements required by the Planning Board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this Article.
4. For development approved for construction (including conditional approval) prior to 1 April 2013 for which an agreement was reached in writing between the applicant and the Town of Danville regarding payment of fees associated with the impact of the development, said agreement shall remain in force and no additional impact fees shall be due unless permitted by the agreement.

F. APPEALS OF IMPACT FEE ASSESSMENT

1. If a fee payer elects to appeal the amount of the impact fee, the appeal shall be made to the Zoning Board of Adjustment. In support of such appeal, the fee payer shall prepare and submit to the Zoning Board of Adjustment an independent fee calculation or other relevant study for the new development activity which is proposed, if applicable. The independent study by the fee payer shall set forth the specific reasons for departing from the adopted schedules and methodologies of the Town. The Zoning Board of Adjustment shall review such study and render its decision. All costs incurred by the Town

for the review of such study, including consultant and counsel fees, shall be paid by the fee payer unless the Zoning Board of Adjustment determines a different allocation of costs.

2. The decision of the Zoning Board of Adjustment may be appealed to the Superior Court as provided by RSA 677:2-14.

G. ASSESSMENT AND COLLECTION OF IMPACT FEES

Assessment and collection of impact fees shall be governed by the following procedures:

1. Where subdivision or site plan approval is required for new development, impact fees shall be assessed at the time of Planning Board approval of a subdivision plat or site plan based on the impact fee schedules then in effect. The amount of such assessment shall be applicable to subsequent building construction within the approved subdivision or site plan for a period of five years from the date of Planning Board approval. Once this five-year period has expired, remaining construction for which no certificate of occupancy has been obtained shall be subject to the adopted fee schedule in force at the time of the certificate of occupancy application.
2. With the exception of those plats and site plans meeting the conditions in (1) above, and when no other Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit. The impact fee schedule in force at the time of the building permit application shall apply.
3. Unless an impact fee is inapplicable to a particular development, or where the fee has been waived by the Planning Board, no certificate of occupancy shall be issued for new development until the applicable impact fees have been assessed.
4. The Planning Board and fee payer may agree to another mutually acceptable schedule for payment. If an alternate schedule of payment is established, the Planning Board shall require the deposit of an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Danville.
5. Impact Fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use.

H. ADMINISTRATION OF FUNDS COLLECTED

1. All funds collected shall be properly identified and promptly transferred for deposit into a separate impact fee accounts for each category of impact fee assessment. This impact fee accounts shall be non-lapsing special revenue fund accounts and under no circumstances shall such revenues accrue to the General Fund.

2. The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Article for each building permit so affected for a period of at least nine (9) years from the date of receipt of the impact fee payment associated with the issuance of each permit.
3. Impact fees collected may be spent from time to time by order of the Board of Selectmen and shall be used solely for the reimbursement of the Town of Danville or the School District for the cost of the capital improvements for which they were collected, or to recoup the cost of capital improvements made in anticipation of the needs for which the impact fee was collected.
4. In the event that bonds or similar debt instruments have been or will be issued by the Town of Danville or the School District for capital improvements which are the subject of assessment, impact fees may be transferred for the payment of debt service on such bonds or similar debt instruments.
5. No later than sixty (60) days following the end of each fiscal year, the Town Treasurer shall make a report to the selectmen in accordance with RSA 674:21 paragraph V.I accounting for all impact fee transactions.

I. REFUND OF FEES PAID

1. The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest where:
 - a. The impact fee has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
 - b. The Town of Danville, or the School District, has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate any of the non-impact fee share of related capital improvement costs thereby permitting the capital improvement of capital improvement plan for which the impact fee was collected to be commenced. If any capital improvement or capital improvement program for which an impact fee is collected has been commenced either prior to, or within six years from the date of the final collection of an impact fee, that impact fee payment shall be deemed to be encumbered and legally bound to be spent for said capital improvement or capital improvement program and shall not be refunded, even if it is not fully expended within the six year period.
2. The Board of Selectmen shall provide all owners of record who are due a refund written notice of the amount due, including accrued interest, if any, and shall promptly cause said refund to be made.

3. Impact fees will be refunded to a party other than the current owner if, ninety (90) days prior to the date that an impact fee is due to be refunded, the Town of Danville is provided with documentation to prove that a party other than the current owner is the appropriate party to receive said refund and that the impact fee was specifically excluded from the sale and/or transfer to the current owner.

J. ADDITIONAL ASSESSMENTS

Payment of the impact fee under this article does not restrict the Town of Danville or the Planning Board to require the payment of exactions for off-site improvements for highway, drainage, sewer and water upgrades necessitated by the development, in accordance with the provisions of RSA 674:21, V (j), or other infrastructure and public capital facilities specifically benefiting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

K. PREMATURE AND SCATTERED DEVELOPMENT

Nothing in this article shall be construed so as to limit the existing authority of the Danville Planning Board to deny new proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Danville Zoning Ordinance, or the Danville Planning Board Site Plan Review Regulations or Subdivision Regulations, or which may otherwise be lawfully denied.

L. REVIEW OF FEE SCHEDULE AND BASIS OF ASSESSMENT

The Impact Fee Assessment Schedules and the underlying methodologies establishing those schedules shall be reviewed annually by the Planning Board. Such review may result in recommended adjustments in one or more of the fees based on the most recent data as may be available for the variables comprising the calculation of the fee. No change in the methodology or in the impact fee schedule shall become effective until it shall have been the subject of a public hearing before the Planning Board noticed in accordance with RSA 675:7, and approved by the Board of Selectmen. The methodology and the impact fee schedule shall not be modified more frequently than annually.

Chris made and Chip seconded a **motion to close the public hearing**. The motion **passed** unanimously. Barry said this is enabling legislation. It will allow the town to institute fees for the impact a new development will have on town services, not just the impact to the schools. Chris made and Chip seconded a motion to put Zoning Article #10 to the town warrant. The motion **passed** unanimously. Chip made and George seconded a **motion to add “recommended by the Planning Board” with a 5-0 vote**. The motion **passed** unanimously.

A short recess was held until 8:15pm, at which time the Board opened the first public hearing for Zoning Article #14.

Zoning Article #14

To see if the Town of Danville will vote to amend Article VI.B of the Town of Danville Zoning Ordinance to specify that front lot line setbacks should be either 30’ or the average depth of existing properties for 500’ in either direction on the same side of the street, whichever is lesser. Specifically this will change Article VI.B to read:

B. LOCATION OF BUILDING ON LOT

Except as provided elsewhere in this ordinance, no building, mobile home or permanent structure shall be located nearer than fifteen feet (15') to an abutter's property line and thirty feet (30') from the edge of the right of way, or a distance no nearer the front property line than the average distance of existing properties for five hundred feet (500') in either direction along, and on the same side of said street, whichever is lesser. The setback from the roadway shall be measured from the edge of the right-of-way.

The Board discussed the intent of this proposed amendment. The change will change the word "greater" to "lesser" in the second to last sentence. Chris said this change is important when considering lots of record when a new building is being constructed; this allows the new building to be in line with existing structures on abutting properties. It was pointed out this does not require a new building to be in line with other structures, only allows it to be if the builder chooses.

Chris made and Chip seconded a motion to close the public hearing. The motion **passed** unanimously. Barry added this is a "fall-back" in case something was missed in the ordinance regarding placement of structures. Chip made and Chris seconded a **motion to put Zoning Article #14 on the ballot with one non-substantive edit**. The motion **passed** unanimously. Chris made and Chip seconded a **motion to add "recommended by the Planning Board" with a 5-0 vote**. The motion **passed** unanimously.

Discussion with Cliff Sinnott-RPC

George asked Mr. Sinnott to explain how membership in the Rockingham Planning Commission has been helpful for Danville. He said RPC has been focusing on the coastal region lately. There was a discussion about getting data for the growth management chapter of the Master Plan, ensuring the data is accurate and current. Barry mentioned that some years RPC's services have been used by Danville and some years have not. He also asked about RPC taking positions on issues that may not be in Danville's best interest.

Mr. Sinnott distributed information about RPC to the members. He introduced Dylan Smith and Glenn Coppelman. He explained the planning commissions were established by law and there are nine in New Hampshire. There are three primary functions for a planning commission:

1. provide local technical assistance with Master Plans, Zoning Ordinances, etc.
2. help committees coordinate planning
3. help committees facilitate working together, including with other towns

Mr. Sinnott said he'd like to hear input even if it is contrary to RPC views. He said the town commissioners are part of the "staff" and provide input for what is put on the task lists. When asked if they receive government funding for projects, he answered "not directly." He said they receive money in competitive grants which go toward certain projects. They were recently awarded a grant and are using the funds for updating their own Master Plan.

Mr. Springer said there are some items that have been put forward by the RPC that did not seem to disclose all pertinent details. He likened this to peeling an onion; one layer is pulled back exposing a new layer which was previously hidden. Mr. Sinnott said that municipalities are not obligated to follow RPCs Master Plan; their role is advisory only. Their document benefits towns as a reference.

There was a short discussion about Danville having little commercial enterprise and the commercial district is on the outskirts of town. The needs of Danville may be a lot different than needs of other towns.

Barry mentioned the sidewalk project and that the target date is continually pushed back. It was unknown if this is a transportation enhancement project. Mr. Sinnott said it probably is not as these projects usually are done quickly. He said the transportation alternatives are being revamped and this may be a good time to ask about this project again. Mr. Coppelman said that Sandown recently received approval for a project but then decided to not move forward with it. He advised looking closely at long-term ramifications for projects. The sidewalks may require the town to maintain; the maintenance may not be something the town wants.

There was a short discussion about data integrity. A new topo map is being made this year using light radar for more detail. This will have 2' contours. Mr. Sinnott explained they often have to make assumptions, such as population projections. Transportation counts can be skewed due to other factors. He said the quality of the data depends on many factors.

Barry expressed his opinion that RPC does not often speak to Danville of its own volition. He conjectured that there may be items or discussion come to RPC that are not forwarded to Danville. It was agreed the commissioners play a part in communication between the town and RPC. Barry said he would like to see RPC initiate more dialogue with the town.

Mr. Springer pointed out that it doesn't make sense to look for funding only through grants. Respecting property rights should be a top priority. There was a short discussion about grants and that they are usually 1:1 matching for federal grants. It was brought up that the way a study is conducted should be without a predetermined outcome. The person or company being paid for the study should not have a personal claim in the results of the study.

There was a discussion about circuit riders and the possibility of paying for this service. The Board also discussed how to make the zoning more attractive to businesses. Mr. Coppelman said that it can take time to see results of new zoning. He gave the example of Kingston having revamped their zoning ten years ago and that they are just now seeing the results of it.

At 10:15pm Chip made and Chris seconded a **motion to adjourn**. The motion **passed** unanimously.

Respectfully submitted
Janet S. Denison

Agendas:

- January 9, 2014

7:30pm correspondence and minutes

7:40pm public hearing for zoning amendment citizen's petition

8:00pm