

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

Chairman John Fink, Vice Chairman Darrell Wilson, Secretary Don Martin, member Mike Howie, member Roger Lessard, and alternate members James Barkhouse and Barbara Hegenbart attended the regular meeting of the Ellsworth Planning Board.

City Planner Michele Gagnon, Assistant to the City Planner Janna Newman, Fire Inspector Mike Hangge, and Code Enforcement Officer Dwight Tilton also attended.

Chairman Fink called the meeting to order at 7:00 PM.

Call to Order [7:00 PM]

1. Adoption of Minutes from the December 2, 2015 meeting.

Darrell Wilson moved to adopt the minutes as written. Mike Howie seconded. The motion then passed unanimously.

**Adoption of minutes:
APPROVED**

2. Election of Officers for one year.

Darrell Wilson nominated John Fink for Chairman and Don Martin as Secretary. Roger Lessard seconded.

Mike Howie nominated Darrell Wilson as Vice Chair. Roger Lessard seconded.

There was no discussion. The Board voted unanimously in favor of the proposed slate of officers.

The Board also recognized Don Martin for his excellent attendance record and achievements as a Planning Board member for over 10 years.

Election of officers for one year:

**John Fink, Chair
Darrell Wilson, Vice Chair
Don Martin, Secretary**

3. Preliminary Plan for a Major Use Site Development Plan entitled RH

Foster On the Run for RH Foster Energy, LLC. The proposal is to redevelop the existing *On the Run* convenience store and 8 gas pumps on a 0.7 acre property at the corner of High and Elm streets (51 High Street; Tax Map/Lot: 135/125) in the Downtown Zone.

a. PUBLIC HEARING & DETERMINATION OF COMPLETENESS.

Andrew Hamilton of Eaton & Peabody came forward to represent the applicant in regard to the cemetery investigation conducted on the R.H. Foster property. Mr. Hamilton introduced Mark Honey, a historian, to provide the Board with his research on the history of the subject property.

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

Mark Honey explained that he has been appointed by the citizens of Ellsworth to the Ellsworth Historic Preservation Commission. During the past fifteen years, Mr. Honey has been researching the subject historic site and cemetery in terms of what is located on the lot, where the lot is located, and the size of the lot. Mr. Honey determined this year that the original chapel lot was about a half-acre in size with its frontage on High Street. He indicated that, from historical records, it is still uncertain to whether there were burials conducted on the front end of the chapel lot (which would today be a portion of the RH Foster property), but that, in conjunction with Marcella Sorg, a scientific survey was conducted, and no evidence of burials on the subject lot were found. Mr. Honey remarked that he felt “quite comfortable” that due diligence was performed in locating the burials on the subject lot and that the proposed project could proceed.

Mr. Hamilton came forward to describe the methodology the applicant utilized in investigating the chapel lot site on the RH Foster property. He noted that there is no precise documentation for the location and boundary of the chapel lot and therefore, to be able to delineate a boundary, the applicant consulted with a surveyor and a title attorney. The surveyor was able to superimpose a survey from 1845 showing the chapel lot on to a current survey of the RH Foster lot and the surrounding abutting lots. Mr. Hamilton noted that the focus of their investigation was on the bounds of the chapel lot on the RH Foster property only and not on the abutting lots. He also clarified that the chapel lot is a portion of the entire RH Foster property and it is only on that portion of the property that they conducted the ground penetrating radar (GPR) survey. In addition, a title attorney was able to confirm the location of the chapel lot as shown on the 1845 survey through identifying the abutting residential property owners.

Mr. Hamilton explained that the GPR survey covered the area of the chapel lot portion of the RH Foster property using approximately 100 transects to a depth of 10-12 feet. The GPR survey revealed that there is approximately 5-8 feet of fill on the RH Foster property, with more fill in the rear to make it level with High Street. The GPR survey also revealed anomalies – (1) a large pipe and underground tank at the rear of the study area where the store is proposed to be developed, and (2) several square objects buried with an east/west orientation under the site of the former car wash. Marcella Sorg’s recommendation was to dig a test trench with a depth of 10 feet. The trench was dug on December 17, 2015.

Marcella Sorg, a research professor from the University of Maine and the State’s consulting forensic anthropologist, came forward to voice her

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

concern on the anomalies found near the now demolished car wash. She suggested a 10-foot trench be dug at this site to identify the anomalies. The dig revealed the remains of a building including cement footers and construction debris. She indicated the depth of the trench allowed them to be below the new fill on the site and approximately 5 feet into the older sediment. She remarked that she was looking for graves or remnants of graves such as bone and/or wood fragments. She saw none of these indications. Ms. Sorg concluded that there were no graves at this site and thus that she did not believe that the proposed development would be built on top of graves.

Darrell Wilson asked if the GPR was placed inside the trench to do further surveying and Ms. Sorg replied that it was not because they were at the appropriate depth. Mr. Wilson inquired about the amount of fill in that area and Ms. Sorg explained that approximately 5-8 feet was recent fill and the remaining depth was older fill. Roger Lessard asked if dogs could be used for this type of investigation and Ms. Sorg replied that dogs are not useful for locating objects this old.

Mr. Hamilton explained that there is a provision in the City's Ordinance (Section 605.4.B) that requires the Board to determine if there is a constraint to development. He asked the Board to consider making this determination at the meeting.

Roger Lessard asked if the Maine State Preservation Commission (MHPC) needed to be involved. Mr. Hamilton disclosed that he spoke with Arthur Spiess from MHPC and was told that the MHPC does not take jurisdiction over Catholic Church cemetery matters. Mr. Hamilton also noted that Mr. Spiess was satisfied with Ms. Sorg's findings from her report. Mr. Lessard inquired if the applicant had notified the Catholic Church and Mr. Hamilton responded that there was communication with the local diocese in an attempt to obtain records on the chapel lot and that in the future the applicant would work through Mr. Honey to further communicate with them if needed.

Darrell Wilson asked if the research and documents would be recorded with the City. City staff responded that it would be filed with the Planning Board records, that consideration will be taken to superimpose the historical survey on the next set of tax maps, and that it would be kept with the historical commission's files at City Hall and the public library.

Chairman Fink opened the Public Hearing in regard to the Catholic Cemetery at 7:36pm.

Marc Blanchette came forward and disclosed that he is a City Councilor who also acts as the Historic Preservation Commission's representative to

**Public Hearing:
OPENED.**

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

the Council. Mr. Blanchette recollected seeing the gravestones as a child growing up in Ellsworth and stated his belief that the ground penetrating radar survey was not conducted in the correct location. He showed the Board on the map approximately where he believed the graves were located, which was outside the location of the former chapel lot and consequently outside the area where the survey was conducted.

After much discussion between the Board, the applicant, City staff, and Mr. Blanchette in regard to the potential location of the graves and the chosen GPR survey location, Chairman Fink recommended that the applicant and Mr. Blanchette meet separately to determine if the location that Mr. Blanchette has proposed the graves to be located are on the RH Foster lot, or are within an area that has already been or will be excavated in the future, or in an area that will not be disturbed by the proposed project.

Kim Gourley of 35 Elm Street (Map 134, Lot 126) came forward and stated that she and her husband Brad Manette have lived at their property since 1999. She remarked that the area where Mr. Blanchette believes he saw gravestones may be on her property. She also gave permission to RH Foster and Mr. Blanchette to visit her property in relation to this matter. She also recalled hearing prior evidence of grave being found on her property or possibly on the downhill abutting property.

Jason Barrett (Map 134, Lot 127) came forward to state that Ms. Gourley had made a reference to his property (the downhill abutting property) in her testimony. Chairman Fink asked if the "old driveway" crossed his property and Mr. Barrett responded that he did not know, but that he would allow further investigation on his property if necessary.

Chairman Fink closed the Public Hearing in regard to the Catholic Cemetery at 8:25pm.

Darrell Wilson asked if the existing sign, which the applicant intends to keep, meets the City's ordinance and Michele Gagnon responded that it was okay. Mr. Wilson inquired about the number of parking spaces delineated in the proposed plan and addressed the applicant's request for a waiver for going 25% above the minimum parking space requirement (Article 11 Section 1105.4.B). He explained that the extra spaces would be used as snow storage, but asked if it was possible to make any of them permeable. Michele suggested that Sean Thies, the engineer for the project from CES, Inc., come forward to provide an overview of the proposed project.

Sean Thies came forward to provide an overview of the proposed plan. He explained that the car wash had already been demolished and that the

**Public Hearing:
CLOSED.**

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

plan is to remove the existing store, a few ancillary outbuildings, as well as the existing canopy and fuel tanks. The grading of the lot would stay the same. The entrances on High Street and Elm Street would remain the same with the addition of a mountable island and signage at the Elm Street entrance with a “right in” and “left out” design to deter vehicles from High Street to use the Elm Street entrance. The gas pump canopy would be moved to the front of the lot with the pumps parallel to High Street and the convenience store moved to the back corner of the lot. Mr. Thies explained that the redevelopment will take place within the limits of the existing impervious surface and that the amount of impervious surface will be reduced with the proposed layout. In regard to parking, Mr. Thies stated that the additional parking spaces will aid in better traffic flow within the lot, particularly for fuel delivery trucks, which will utilize the unused parking spaces during their off-hour deliveries.

In regard to stormwater, Mr. Thies stated that with the reduction of impervious surface on the subject lot, there would also be a reduction in stormwater runoff. To address the quality of runoff, special outlet pipes have been proposed for the catchbasins in order to limit the amount of sediment and to separate water and oil as it leaves the site. Mr. Thies explained there is a provision in the City’s ordinance (1003.3.C.iii.b) that permits the applicant, where on-site quality treatment is not practical, to pay a one-time fee based on 105% of the estimated cost of constructing quality controls on-site. According to Mr. Thies, given that the subject site is small in size and already over-burdened with underground infrastructure, the applicant has opted to pay the fee, which they calculated based on an estimated price for a stormwater quality treatment system suitable for their lot size and that is in compliance with the State Best Management Practices. Chairman Fink asked if there was currently any quality treatment conducted on the site and Mr. Thies replied that there was not. It was determined that the stormwater management plan proposed by the applicant is an improvement to the existing stormwater management at the site. Darrell Wilson asked if green roofs, permeable pavement, and tree wells were taken into consideration to treat the quality of the stormwater runoff. Mr. Thies responded that these options were considered, but they were found to be unpractical for the site.

Mr. Thies explained that the applicant would be maintaining the current landscaping at the site and would add vegetation to the back slope of the site. He noted that the applicant intends to keep the current landscaping, but in the event that they change or add landscaping, it would conform to the High Street Beautification initiative. This detail is noted on the submitted plans. Mr. Thies confirmed that snow would be trucked off-site if the designated snow storage areas are not adequate. Darrell

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

Wilson confirmed that the proposed project is not within the Card Brook watershed.

Darrell Wilson explained that, according to the proposed lighting plan, there is an area of parking that does not meet the minimum requirements. Mr. Thies explained that the area that Mr. Wilson was referring to is a result of the applicant proposing to eliminate a utility light that currently disturbs neighboring properties. Mr. Wilson also noted that the lighting plan shows the applicant exceeding the average maximum under the canopy. Mr. Wilson recommended the applicant consider alternative lighting for the area that is dark because it poses a security issue on the site.

Darrell Wilson addressed the waivers that the applicant has requested.

Mr. Hamilton requested to come forward to address the Board again regarding the cemetery. He explained that he had just spoken with Mr. Blanchette, who acknowledged that the graves he recalled from childhood could well be on the Gourley property, given the amount of fill that has been added to the RH Foster lot over time. Given the outcome of their discussion (which will continue outside the realm of the Planning Board's public hearing), Mr. Hamilton asked the Board to reconsider the motion that there is no constraint to development in the bounds of the chapel lot on the RH Foster property. Darrell Wilson expressed his concern that a portion of the new convenience store is being proposed to be built outside of the chapel lot boundary. In consideration of a potential motion by the Board, Mr. Hamilton suggested a condition - any area outside the chapel lot that is on the RH Foster property and subject to a permanent above ground improvement should involve a full investigation for graves or evidence of graves and be addressed appropriately. Dwight Tilton said that the condition Mr. Hamilton proposed be added to the motion is also documented in the lot's deed restriction and in the State statute.

Darrell Wilson moved that based on the information presented during the Preliminary Plan Meeting, the Planning Board concurs that the former "Chapel Lot" Catholic Cemetery (the red crossed hatched area on the plan) has been thoroughly investigated by the Applicant within its property boundaries and that, based on the substantial evidence provided by the Applicant at the Preliminary Plan Meeting, the former "Chapel Lot" Catholic Cemetery on the southeasterly portion of the subject site does not present a constraint on development of the subject site under Section 605.4.B of the Ellsworth UDO with the condition that excavation outside the "Chapel Lot" on the subject property that exposes any remains or evidence of a cemetery will be appropriately

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

dealt with if discovered. Mike Howie seconded the motion and the motion passed unanimously.

Chairman Fink opened the Public Hearing in regard to the completeness of the proposed plan at 9:03PM.

Kim Gourley of 35 Elm Street came forward to publicly thank RH Foster and Dwight Tilton for listening to her and her husband's concerns in regard to lighting. She wanted to reiterate that currently they experience a significant amount of light pollution from the lights on the RH Foster property. Ms. Gourley also revealed that "polluted" runoff flows off the RH Foster lot (seeping out of the hill behind where the new convenience store is proposed to be built) and on to her property. She requested that the runoff be further investigated.

Sunshine Barrett of Elm Street came forward to express her concern on three issues: polluted runoff, light pollution, and noise from an increase in traffic.

Chairman Fink explained that the comments brought forth are more appropriate for the next Planning Board meeting during which the merits of the application will be determined. With no further comment, he then closed the Public Hearing at 9:08PM.

Darrell Wilson inquired with City staff as to if letters from the City's water and sewer departments were necessary to make the application complete. Michele Gagnon responded that she would like the letters to be included.

At this point, Chairman Fink stepped out of the room and returned minutes later. A quorum was still kept with the other members of the Planning Board present.

After some discussion on the completeness of the application and the applicant's waiver requests, **Darrell Wilson moved that the Board approve the waivers in regard to: (1) Section 606.7.E that deals with roads and driveways within 200 feet, and (2) Section 1105.4 that deals with excess parking; that there be a condition that the applicant provide letters from the City's water and sewer departments; and that the Board accepts the fee in lieu of stormwater quality treatment. Roger Lessard seconded the motion and the motion passed unanimously.**

Darrell Wilson moved with regard to the Preliminary Plan for a Major Use Site Development entitled RH Foster On the Run, item three on the Agenda, the proposal to redevelop the existing

**Public Hearing:
OPENED.**

**Public Hearing:
CLOSED.**

**City of Ellsworth
Planning Board
Minutes of January 6, 2016**

convenience store, that this is an allowed use in this zone, and that the application is complete with the conditions that the applicant provide an asbuilt plan of the stormwater system and that the stormwater maintenance plan include a log that can be available to the City upon request. Roger Lessard seconded the motion and the motion passed unanimously.

**Preliminary Plan for a
Major Use Site
Development entitled
RH Foster On the Run:**

**COMPLETE WITH
CONDITIONS**

4. Adjournment.

Darrell Wilson made a motion to adjourn the meeting, John Fink seconded the motion, and it passed unanimously. The meeting was adjourned at 9:20PM.

**Meeting Adjourned
[9:20 PM]**

Minutes prepared by: Janna Newman, Assistant to the City Planner.

Minutes approved by:

2/3/16 
Date Don Martin, Ellsworth Planning Board Secretary

NOTE: For agendas and minutes, see:

ellsworthmaine.gov