

City of Keene
New Hampshire

MINOR PROJECT REVIEW COMMITTEE
MEETING MINUTES

Thursday, February 2, 2023

10:00 AM

**IT Training Room,
City Hall**

Members Present:

Jesse Rounds, Chair
Med Kopczynski, Vice Chair
Don Lussier
John Rogers
Don Farquhar (arrived at 10:16 AM)
Mari Brunner, Alternate

Other Staff Present:

Megan Fortson, Planning Technician

Members Not Present:

Mike Hagan, Alternate
Steve Dumont, Alternate
Kürt Blomquist, Alternate

1) Call to Order – Roll Call

Chair Rounds called the meeting to order at 10:06 AM. Roll call was conducted.

2) Pre-submission Consultations – Informal review and comment on proposed projects for site plan review or subdivision review prior to the formal submission of an application. Walk-ins accepted.

Chair Rounds stated that for pre-submission consultations, they will wait and see if anyone shows up. They will hold this open, and move on in the agenda in the meantime.

3) Discussion Regarding the Format and Schedule for Pre-submission Meetings

Chair Rounds stated that today is both a pre-submission meeting and a meeting of the MPRC. He continued that what Ms. Brunner, Ms. Fortson, and he propose is to go back to an alternate version where the pre-submission meeting happens right before the regularly scheduled MPRC meeting, in this room. It would not be recorded, but notes would be taken [by staff], roll call would be taken, and so on and so forth. It would be an official meeting, noticed, with an agenda published beforehand, but it will be similar to what the pre-submission meetings were like before.

Mr. Lussier stated that if Mr. Blomquist can designate Yelma [Desseta] as an alternate, he could attend the pre-submission meetings and he (Mr. Lussier) can continue to attend the MPRC meetings. Chair Rounds replied that that is his understanding. Ms. Brunner replied that currently, Mr. Lussier is the designee from the Public Works Department, and Mr. Blomquist is the alternate, so instead of Mr. Blomquist being the alternate, Mr. Desseta would be.

Mr. Rogers stated that there are other departments not represented in the MPRC that would still need to be at pre-submission meetings, such as Police. He continued that Police staff members would be present for input. It might be better if (Mr. Lussier) was here as part of the MPRC. Mr. Lussier replied that he is trying to find a way to not have to attend both the pre-submission meetings and the MPRC meetings.

Ms. Brunner stated that the intent would be to invite more staff than is represented on the MPRC. She continued that they would be attendees participating in the meeting. The minutes would consist of a list of the members present, a list of others participating in the meeting, and a brief description of the topics discussed. The fourth requirement under State law is to include any decisions the group makes, and she, Chair Rounds, and Ms. Fortson propose having no decisions made at the pre-submission meetings. Even the adoption of the minutes can happen at normal MPRC meetings. The pre-submission meetings will still be MPRC meetings, but the only item on the agenda will be pre-submission inquiries. The meetings will be on Thursdays, and people will have until the end of the day on Tuesday to let the MPRC know if they want to attend and be listed on the agenda. At the end of the meeting, they would also allow walk-ins.

Chair Rounds stated that the normal MPRC meeting would only then happen if there were agenda items for it. Mr. Lussier asked if they would be separately noticed meetings. Chair Rounds replied yes.

Ms. Brunner stated that the official MPRC meetings, such as for public hearings, will have detailed meeting minutes taken by the assigned minute-taker (from the City Clerk's Office). She continued that those meetings will be broadcast live and posted on the City's website the day after, so they are much more publicly accessible. They are also working with the Communications Department to make sure any decisions made at an MPRC meeting are posted online the next day, as the City Council actions are. This is because a Supreme Court decision from last June affects when the appeal timeframe starts for abutters. Staff is thus being more transparent about decisions that are made. Under State statute, the MPRC has to follow all of the same procedures as a Planning Board. Planning Boards issue conditional approvals all the time, and most likely, so will the MPRC. A conditional approval is not final until it comes back to the MPRC to issue a final approval, at a publicly noticed meeting. That starts the appeal timeframe for abutters, but abutters would not necessarily know when the MPRC has issued its final approval. Thus, staff is trying to be extra transparent by publishing, the next day, the recording and the list of actions taken, so it is easier for abutters to follow along and see when a final decision was made.

Mr. Kopczynski asked if the MPRC or the PB, when making a decision, does it in the form of a finding. Ms. Brunner replied no. She continued that the way that the “findings of fact” are included with the final decision is by having the meeting minutes from the deliberation attached. She continued that this does bring up a good point. A public meeting begins with the MPRC members voting on whether to accept the application as complete, and then the applicant gives a presentation, which MPRC members can then ask the applicant questions about. The MPRC is not deliberating at that point. Staff has a chance to do a presentation (more common at PB meetings than at MPRC meetings), and the public has a chance to speak. The Chair could then invite the applicant back up to respond to any questions or concerns raised by the public, and so on and so forth. Once the Chair closes the public comment period that is the critical time where the MPRC should be deliberating. Those deliberations are the findings of fact that will support the MPRC’s decision. If a decision is appealed, by either the developer or an abutter, those are the findings of fact the court would look at to see if the MPRC based its decision on information or a reason, or just personal feelings. When the Chair says, “I’m closing the public hearing and opening it up for deliberation,” they do not want someone to immediately make a motion to approve. Before making such a motion, they should say, for example, “I think the applicant has demonstrated that they meet all of our standards.”

Mr. Rogers stated that it is okay to make a motion to approve, but even so, they still have to deliberate. Ms. Brunner replied that is true. Others agreed that it is okay for someone to make a motion and for the MPRC to then deliberate. Mr. Rogers stated that the point is that while someone can make a motion right away, the group should not be *voting* on the motion right away. Chair Rounds replied yes, the deliberations must happen.

Mr. Lussier asked if there is a specific checklist of facts the MPRC should deliberate on, regarding determining, as Ms. Brunner stated, whether the application meets their standards. Ms. Brunner replied yes, if they are approving something or approving something with conditions, all the MPRC needs to find is that the applicant has met all of the City’s standards. She continued that denying a portion of an application is a whole different ballgame.

Chief Farquhar arrived at 10:15 AM.

Ms. Brunner continued that the MPRC needs to be very clear and specific about what they are denying and why. If they decide to deny an entire application, they should hold off, and instead continue the public hearing to the next MPRC meeting, because they need to work with legal counsel to determine the proper language to include. That is to make sure that the decision the MPRC makes is defensible in court.

Mr. Kopczynski asked if that would be something like, “Based on what we have heard, we have some concerns, and we want to continue this deliberation to a date certain.” Chair Rounds replied that that would typically be the next meeting. Mr. Kopczynski stated that if it was some specific issue, it gives the opportunity for staff from whichever department to sit down with the City Attorney to craft the actual motion. Ms. Brunner replied yes, or it could give the applicant time/a

chance to correct something. She continued that for example, if the MPRC is ready to deny the application because they do not think it meets the standards, they could decide to continue it to give the applicant time to submit information about how they will address certain concerns. That is something the MPRC could do. They do have a specific timeframe within which they have to make a decision; she thinks it is 60 days.

Mr. Rogers stated that typically the applicant would be back before the MPRC within a two-week window. Mr. Lussier replied yes, that is the purpose of the second meeting of the month.

Mr. Kopczynski stated that during the deliberations, there should be clarity so the applicant knows if there are concerns and has a chance to address them. Others agreed. Ms. Brunner stated that the Community Development Department always follows up after a MPRC meeting with a letter (to the applicant), summarizing any action taken by the MPRC, and they put in that letter any additional information the MPRC requested. Thus, it is clear to the applicant that the matter was continued, and that the continuation was due to the MPRC's concerns about XYZ. That way, the applicant knows what to bring to the next meeting to address those concerns. The State statute requires staff to do that. Again, the MPRC's deliberations are when they make all of that information clear.

Ms. Brunner stated that it is unlikely, given the MPRC's meeting schedule, but if they want to go beyond their decision timeline of 60 days - for whatever reason, such as the applicant being on a three-week vacation – the MPRC must get something in writing from the applicant that says that the applicant agrees to continue beyond that 60-day timeframe. She continued that otherwise, the MPRC would need to either approve or deny the application within those 60 days. They are allowed to deny based on not having sufficient information. That is a valid reason. In that case, they would deny an application without prejudice, so the applicant has a chance to try again.

Mr. Kopczynski stated that there is a second half to his question. He continued that this a PB process, where the MPRC is a substitute for the PB. He is not aware of any definition of "abutter" in that case. Ms. Brunner replied that "abutter" is anyone who is a direct abutter, which is the State definition, or across a road or a stream. She continued that the City of Keene has expanded the definition to also include anyone within 200 feet. Mr. Kopczynski asked if they put that in the Land Development Code (LDC). Ms. Brunner replied yes. She continued that the only board it is different for is the Historical District Commission (HDC), which only requires that direct abutters be noticed as part of the application process.

Chair Rounds asked if everyone is okay with the plan and if everyone's questions have been answered. He continued that to recap, going forward the MPRC will hold pre-submission meetings the first Thursday of every month, in this room. The meetings will be noticed, with an agenda published beforehand, but the meetings will be more informal. Staff will take basic notes on who was there and what generally was discussed, and there will be an open format allowing walk-ins. Then the MPRC will meet on the first and third Thursdays, at 10:00 AM, in City Council

Chambers, following the normal MPRC agenda. If they do not have agenda items, they will not meet.

Mr. Lussier asked if the pre-submission meetings will be from 9:00 AM to 10:00 AM. Ms. Fortson replied that the pre-submission meetings used to be at 8:30 AM. She asked if an hour is enough time. Ms. Brunner replied that they do not need to notice the meeting until 24 hours in advance and there is no public hearing, so they can wait until the end of the day on the Tuesday before the meeting to assess whether the number of items can be addressed in an hour. Meetings will regularly be from 9:00 to 10:00 AM because it is rare to have more than three items, but if they get a lot of interest and have, say, six items for a pre-submission meeting, they can schedule it for 8:30 AM. If the pre-submission meeting runs late, that is okay. They are not allowed to start a meeting early [without the 24-hour notice], but they are allowed to start the MPRC meeting late, as long as someone is at Council Chambers to tell people that the meeting is still going to happen and keep them updated. That would be the contingency plan if there comes a time when 8:30 to 10:00 AM is still not enough for the pre-submission meeting. She hopes that the flexibility of starting the pre-submission meeting at 8:30 AM when needed will be enough.

Chief Farquhar asked if the same person could sit in on the pre-submission meetings and the MPRC meetings, or if it has to be a different person. Ms. Brunner replied that the same person can be at both meetings, and in fact, the pre-submission meetings need to have quorum to be held. Chief Farquhar replied that that means he could then do both. Ms. Brunner replied yes. Mr. Lussier stated that he plans to have Mr. Desseta attend the pre-submission meetings as an alternate.

Mr. Rogers asked what happens if a pre-submission meeting does not have any agenda items. Do they still hold the meeting and wait for a certain amount of time, such as 15 minutes, to see if any walk-ins show up? Mr. Kopczynski asked if the meeting notices specify a time by which walk-ins have to show up, so they do not have people waiting until close to 10:00 to show up. Mr. Lussier suggested the agenda say that walk-ins are welcome from [9:00 to 9:15 AM], and then if there are no walk-ins by 9:15 they could end the meeting. Mr. Kopczynski replied yes, because he would hate for someone to show up at 9:20 to find an empty room.

Ms. Brunner replied that Ms. Fortson has been emailing the list of 'known entities' who submit applications. She continued that if someone calls, they can let them know about the pre-submission meeting and ask if they want to be on the agenda. There is always the chance that someone will just walk in, but they have not seen that happen in years. It used to be somewhat common before COVID, but even then, the walk-ins were people the City had worked with regularly. During COVID, because the meetings were on Zoom, staff would email the known entities ahead of time and ask them to let staff know if they wanted to be on the agenda. They have not had any walk-ins since COVID.

Ms. Brunner stated that one clarification is that the "notes" taken at pre-submission meetings will be official sets of minutes, but will only include the minimum the State RSA requires. She continued that she proposes having the pre-submission meeting minutes adopted at the regular

MPRC meetings. Mr. Kopczynski asked why the minutes need to be approved. Ms. Brunner replied that NH RSA 91-A requires it. Mr. Rogers asked if it would be an issue if the MPRC members approving the pre-submission meeting minutes were not all present at the pre-submission meeting. Ms. Brunner replied that the people voting on the minutes do not necessarily need to be the people who were present at the meeting.

Mr. Lussier stated that he has something that is not on the agenda. He continued that yesterday, staff was working on staff comments on applications that were before the PB. He asked if it is appropriate to bring up a question, he had about one of those, in this meeting. Ms. Brunner and Chair Rounds replied yes. Mr. Lussier stated that regarding the light industrial project by Black Brook, it will be about 850 feet from the hydrant back to the last building. It occurred to him that they should have a second hydrant on the site. Is that something Chief Farquhar would comment on or should he (Mr. Lussier) should stay in his lane? Chief Farquhar replied that a collaborative approach is great, so if Mr. Lussier notices something he did not, it is good to speak up. To him, the value of a group like this is that each person has their own lens, and everyone's observations and opinions are better in the aggregate than individually. Chair Rounds replied yes, that is the whole intent of this process. Mr. Rogers agreed and stated that it is helpful to have other sets of eyes looking at these things and asking questions.

4) Upcoming Meeting Dates

- February 16, 2023 at 10:00 AM (*if needed*)
- March 2, 2023 at 10:00 AM

Ms. Fortson stated that there probably will be an agenda item for February 16.

5) Adjournment

There being no further business, Chair Rounds adjourned the meeting at 10:35 AM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Megan Fortson, Planning Technician