

TOWN OF CHESTERFIELD, NH
PLANNING BOARD
MINUTES

MONDAY, SEPTEMBER 21, 2009

Present: Susan Lawson-Kelleher (Chair), Bob Del Sesto, Tom North, Helga Frohn and Jon McKeon– arriving at 7:30 p.m. (Selectmen’s Representative)

Absent: Stephen Pro (Vice-Chair) and Brad Chesley (alternate) * Elaine Levlocke (Secretary) has resigned from the Planning Board since the previous meeting was held.

Call to Order

Lawson-Kelleher called the meeting to order at 7:23 p.m.

Seating of Alternates

There were no alternates to be seated.

Review of the Minutes

- August 31, 2009

Frohn moved to approve the minutes as amended. Del Sesto seconded and the motion carried unanimously (Susan Lawson-Kelleher - Yes, Bob Del Sesto - Yes, Tom North - Yes, and Helga Frohn – Yes; Jon McKeon – had not yet arrived).

Appointments

- **Browne Ltd. Partnership, Elizabeth Principe** – Continuation of the public hearing for a proposed 9-lot major subdivision of approximately 111.8 acres located on Atherton Hill Road (Map 10, Lot A1) within the Residential and Rural/Agricultural zones.

The letter drafted by Lawson-Kelleher was copied to all and Lawson-Kelleher summarized the responses to the Board’s request for bids on a comprehensive review. She had received 2 phone calls and the Board had received an email response, all parties indicating that they would be unable to conduct a comprehensive review in this matter at this time.

Copies of the notes on potential candidates were supplied, upon request, to representatives of Browne Ltd. Partnership and Concerned Friends of Atherton Hill Road along with copies of the letter requesting bids. It was noted that previous meeting minutes contained reference to firms that had been discussed for consideration as well. All meeting minutes have been approved and are on file in the Selectmen’s office.

After some discussion on the areas that appear to create a hardship in finding a reasonable, impartial candidate to do a comprehensive review in a timely manner based on the materials that were made available, it was decided (based on input from Lawson-Kelleher, Rebecca Todd, representing the CFAR, Concerned Friends of Atherton Hill Rd and Robert Dietel, from Atty. Pollack’s office) that Lawson-Kelleher would follow up with a few of her previous contacts as well as conduct further research to look into other potential candidates;

and the attorneys representing both sides of this matter would come together to discuss whether there were any candidates that both sides agreed they would be comfortable with conducting a complete and unbiased review. Dietel supplied the Planning Board with another waiver extending the time clock to October 31, 2009.

- **Evangelical Free Church of America Camp Spofford** – David Mann has requested an audience with the Planning Board to discuss the final review/life safety review process and what is required at this stage to get Planning Board approval. File correspondence and additional submissions were presented this evening for review, including a letter from Code Enforcement.

Copies of all email correspondence between Del Sesto, DeBlois, representative of the Town of Chesterfield, and representatives of Camp Spofford exchanged to date were copied to all Board members. David Bergeron addressed the Board. Bergeron went over the new information being submitted to the Board and stated that hard copies of the latest plan drawing were put in the mail to DeBlois today.

Bergeron presented drawings from the architect (Rev. date 09-17-09) and stated that the design is a building system. The applicants are requesting that the Board consider changing the conditions for final site approval to allow Chet to issue a building permit contingent upon meeting all codes, regulations and conditions of the life safety review.

The emails were reviewed, identifying previous issues that had been addressed. Bergeron identified the Rural Fire Supply Standard as establishing industry standards related to the sprinkler system now in question.

The applicant's request is to make the certificate of occupancy contingent upon final approval, rather than the building permit. This would allow them to start construction in time to, hopefully, complete construction this year. If the certificate of occupancy is contingent upon satisfying conditions of the life safety review as well as all matters related to building code; Chet still has the ability to enforce code and conditional Planning Board approval can be revoked. The matters being discussed now are all matters that would fall within the parameters of code enforcement, and that should be a matter for Greenwood to approve.

The letter from Greenwood addressing the matter of sprinkling system was reviewed, reinforcing Bergeron's position in this regard, and recommending that the Town of Chesterfield follow the normal approval process that has become the construction industry standard.

Bergeron told the Board that DeBlois had been satisfied and had been ready to sign off on the life safety review when Del Sesto requested additional information.

Del Sesto has reservations about leaving the matter of enforcement to the Building Inspector. He stated that in the past, there have been a number of sites that have been allowed to get by Code Enforcement while compliance has not been assured.

Tom Hanna feels that Del Sesto is overstepping his authority. The duty of enforcement must be left to Greenwood. Hanna stated that he believes Del Sesto is calling upon his own knowledge and work history, and acting beyond his appointment as a liaison to foster

communication between DeBlois, the life safety reviewer, and the Planning Board. Hanna feels Del Sesto is taking it upon himself to determine what the reviewer needs to consider and act upon, and not allowing the Board to hold discussion in a public hearing and make those determinations before giving direction to DeBlois. Hanna feels Del Sesto has a conflict and should recuse himself. Del Sesto stated that he was appointed as a liaison to assist the Board. There was no recusal; and the discussion continued.

Bergeron stated that he felt the applicant had supplied sufficient information at this time; the review would be carried out to completion, but he would like the conditions for Planning Board approval to be modified to allow Chet to issue a building permit at this time so that they could begin construction, with the knowledge that the sprinkler and fire alarm system must meet all requirements in order to get the certificate of occupancy.

McKeon stated that he understood the applicant's position and agreed with Chet's position, but inquired how the applicant could get a price for a fire alarm system without details. Bergeron assured the Board that there would be no issues; the applicant would obtain a system that met with Greenwood's approval.

It was noted that the design company is from Michigan, or so Bergeron believes. They are not familiar with local requirements, but Bergeron assured the Board that everything will be in order, and there will be a New Hampshire certified engineer's stamp on the final plans.

Bergeron noted that there were 4 options available to supply water to the site. Once they are allowed to begin construction, certainly they would ensure all requirements are met in time to stay on schedule for building completion. Chet will ensure codes are met. Del Sesto voiced his concern that he is still unsure of this point. Bergeron stated that the Planning Board must trust Chet to do his job. The rest of the Planning Board concurred.

McKeon moved that the Planning Board agrees that the third party review of the sprinkler system shall be tied to the certificate of occupancy rather than a building permit; and an amended Notice of Decision shall be executed to reflect the revised conditions for final approval and copied to Greenwood. Frohn seconded the motion. The motion carried by majority decision (Lawson-Kelleher - Yes, Del Sesto - No, North - Yes, Frohn - Yes and McKeon - Yes).

The applicant was reminded that the fire alarm system and any other life safety items needed to be reviewed by the third party reviewer and payment for the third party review must be made by the applicant before a building permit can be issued.

- **Daniel Orr** – A Notice of Voluntary Merger of properties located at 14 Wellington Drive (Map 10A, Lot C14) and Route 9 (Map 10A, Lot C13.1) totaling approximately 4.18 acres in the Rural/Agricultural zone (to become known as 14 Wellington Drive (Map 10A, Lot C14) has been completed and left in the Planning Board office. Orr has not yet returned with a check payable to the Cheshire County Registry of Deeds in the amount of \$12.44 as is required prior to review and signature by the Planning Board Chair.
- **Frank Underwood** – A Notice of Voluntary Merger of properties located on Stow Drive (Map 12, Lot A1.21 and Map 4, Lot C1) in the Commercial/Industrial zone (to become known as Map 12, Lot A1.21) has been completed and left in the Planning Board office.

Underwood has not returned with a check payable to the Cheshire County Registry of Deeds in the amount of \$12.44 as is required prior to review and signature by the Planning Board Chair. Underwood may choose to process the Voluntary Merger in conjunction with an application for site plan review that will be listed on the October 5 agenda.

- **Pierre and Tilia Saba/Riverside Hotel** – Continuation of the public hearing for a site development review of property located at Route 9 and Mountain Road in West Chesterfield (Map 14C, Lot B1) in the Commercial/Industrial zone to modify previously approved major site development plan.

Mike Bentley updated the Board on the status of the Riverside hotel site. Saba believes bollard lights are all fixed, although Bentley reports that Dave Belanger disagrees. Lights have been installed in accordance with pictures that had been presented to the Planning Board; Bentley reports that Belanger feels that they cast more light. The new dumpster location is now shown on plans. It was noted that the previous location of the dumpsters is still on the plans and must be removed. The new dumpster is shown on the plans but measurements locating the dump pad must be added to the plans.

The plans also show the current location of the 18 underground electrical receptacles. The Use Intensity Statement must still be amended to indicate the temporary nature of the outdoor electrical receptacles; they are listed “for temporary use” on plans. McKeon would like some indication/proof that they will meet code.

Regarding the lights in the parking lot, Saba submitted a report from a lighting engineer purported to be an analysis of lighting at 15’ vs. lighting at 17’ and other information. Saba told the Planning Board that it is all very technical and he still is waiting for a letter that will provide an explanation of the data contained in the report. He conveyed to the Board that he had been told by the engineer that the difference in foot candles could not be detected by the human eye, and that if you could you would see that it was actually worse at 15’ than at the current height of 17’.

Another point Saba wanted to make regarding the lights in the parking lot is that there are many businesses in the area with the light poles raised on sona tubes the way his lighting was installed; this makes it safer when the parking lot is plowed, if the plow gets too close it will hit the cement barrier rather than knocking over the light. Since he feels this is a legitimate safety concern, as well as the difficulty and expense to cut down the sona tubes, he asks that the Planning Board consider allowing him to reduce the height by taking it away from the pole itself rather than having to cut the sona tube down to 2-3” above grade.

North agreed with Saba that it is somewhat standard to install light poles on the sona tubes; he has seen this at Perkins, McDonalds, Wendy’s and so on... he also agrees with the plowing scenario. He too feels it is ridiculous to ask Saba to cut down the sona tube; it will be better and cheaper to shorten the metal pole if the Board maintains that the height must be reduced.

McKeon stated that he did not feel the Planning Board should dictate how to resolve the issue, only to hold Saba to the height requirement. Frohn agreed.

Saba also stated he did not believe the condition agreed with Planning Board regulations. He referred to language used in the approved site plan of June 2007 being, "typical 15' pole mounted" and stated that he felt this was a typical mounting of a 15' pole; the language is not specific in regards to the height of the base. Lawson-Kelleher said Saba had a point. McKeon and Del Sesto challenged Saba's translation, stating that "height" standardly referred to the height above ground level and when the Board approves plans with heights indicated they indicate the height above finished grade.

There was discussion regarding the consistent height at the top of all poles; they were installed so as the poles that were placed on different levels all evened out to the same level height at the top of all poles. Some of the Board members thought this is how they should appear; Del Sesto stated that the height must be 15' from ground level to the top of the light fixture regardless, which would result in the top of each light being at different levels, in keeping with the varying ground levels.

Del Sesto also found the premise of Saba's argument that the illumination being better for abutters at higher elevations to be highly unlikely and expressed discontent that there was no explanation accompanying the submittal to back that up. Saba held fast to his statement and stated that the letter verifying this would be forthcoming.

The site visit still needs to be conducted to view lights on the fence. It was noted that all four lights have been installed, rather than just the one test light as was agreed upon. After the test light was installed and the light on the building front was repaired to working order, Saba was to have notified the Planning Board so that members could inspect the site on an individual basis prior to the next Planning Board after that work was done. Saba did not contact the Planning Board. The Planning Board made sure it was clear to Saba that if the Board did not feel the lighting installed on the fence was satisfactory; all 4 lights would have to be removed regardless of the expense he had incurred. Bentley stated that Pierre understood this.

Bentley stated that all other lights are in place and working. It is Saba's belief that the light fixture and bulb that was previously not functioning on the building's east face is now functioning and the fixture, bulb and wattage are all the same as the ones on the other sides of the building. Bentley stated that Belanger does not believe this is so; but if the Board feels there is any question at the site inspection it will have to be proved. Lawson-Kelleher asked if it would be worth trying to get ahold of a light meter. Del Sesto did not think it would be reasonable to think that a light meter would be of use in this environment; you would not be able to single out the one light fixture being surrounded by so many other light sources and get an accurate reading.

The applicants stated that they were here this evening to report the status; the lights are available to see and they are submitting new information with more coming. They will be requesting a review to possibly amend previous requirements.

Del Sesto wanted to review previous minutes regarding the pad required for the dumpster location. There was a question of whether or not a cement pad was actually required. Requirements listed in the July 6, 2009 minutes make reference to "the size of the pad..." Del Sesto had made the assumption it would be a cement pad and stated that a pad must at least be a defined, raised area. The dimensions and location were to be defined. Bentley

stated that they would include dimensions prior to the next meeting. The pad must be a distinct indication of a fixed area.

Saba also told the Planning Board that Greenwood wanted a “no idling” sign installed.

David Belanger asked to address the Board. He expressed that he has come to every meeting he was aware of since the original application and has been voicing his concerns since 2007; he is upset with the Board’s memory. The Board agreed to give Saba extra time to take care of the lighting issues because the lights were on backorder and Saba was going to be out of the country for an extended period. Saba was to, upon his return, have the repairs completed and install one test light and immediately notify the Planning Board so that members could view the site prior to the continued hearing date. Belanger came to the meeting expecting closure this evening.

Belanger’s attorney, Gary Kinyon, felt the Board must keep in mind that Saba has over and over blatantly disregarded the direction of the Board. When the Planning Board demands he comply with their requirements, he keeps requesting delays; and each time he comes back in, instead of resolution he presents more information and asks for more allowances to make changes in the site plan or to conditions imposed. This is unfair to the abutters that have been forced to live with this situation for 2 years now. He asked the Board to please think about it in this context.

Kinyon stated that on July 6, 2009, the Planning Board voted on the requirement for arborvitaes; that is not even being discussed this evening. In one more month it will be too late to plant in time for fall. He asked that the Board please vote tonight that the arborvitaes be planted within 30 days so that there will be a screen. Kinyon noted that Belanger has already felt it was necessary to take the step of planting arborvitaes on his own property at his own expense. It is just not right; Saba is told he must do something, he doesn’t do it, he comes back when everyone expects it will be done, and he says, “well, here’s more for you to consider”... he just keeps everything in motion over and over and is never forced to do what has been required of him.

Kinyon disagrees that Saba has a right to request an amended site plan. He must complete the application before the Board and then come before the Board with another application but he cannot keep adding things on piece-meal, meeting after meeting. The scraps of an expert report presented this evening, and telling you there is more coming, more for you to consider is yet another example.

Kinyon also noted that the Board has requested of Saba cut sheets on lights. He understands this to be a specification sheet, in this case so all will know what that when you are looking at the manufacturer’s fixture, it will be 100% downcast. The shield keeps changing on these fixtures – we must get a handle on defining the issue of 100% downcast. Kinyon asks the Board to require them and that there be cut sheets provided for each fixture for future verification.

When looking at the lights, relative to the light on the building itself, on the 5/26 site visit this light was not operational and it is now. There is a light required for emergency access over the emergency exit that is required by code; but this one is not required for the emergency exit. You can see in photographs that the area is well illuminated and this light is

not necessary for safety reasons. Saba wants to retain this light, citing 2007 Planning Board approval.

Del Sesto stated that if it really matches the other lights as per the 2007 site plan approval, it will be okay. The Planning Board would have a case to make them change it if it is obviously different.

Kinyon notes that the abutter is requesting it be disallowed while reviewing the amended site plan. Why can Saba keep asking for changes as he goes along, but Belanger cannot request the Planning Board change its approval criteria for the amended site plan?

Kinyon also asked that the term “temporary” be defined in regards to the outdoor power supply. One of the temporary uses indicated was a Christmas tree. If that Christmas tree is left up for weeks, that is no innocuous.

Kinyon referred to the current proposed Use Intensity allowing for commercial deliveries. He noted that headlights resulting from after-dark deliveries would shine directly into Belanger’s windows, and the noise of backup beepers would also bother abutters. At the very least they should be restricted to daytime business hours, but Kinyon feels the applicant should be held to the restrictions of the Use Intensity Statement approved in 2007. He feels that this is yet another case of allowing for amendments to compensate for the applicants violation of previous requirements.

Kinyon thanked the Board for hearing his concerns.

Belanger noted that he hopes the Board will take note that with the dropping of leaves, the foliage allows for even greater intrusion of light from Saba’s property. He is hoping the site visit will take place after darkness. He also expressed gratitude to the Board for coming into his home to see the lighting issues from his viewpoint.

Bentley reviewed the process that came about to result in the modifications made in attempt to satisfy the Code Enforcement Officer’s request to achieve downcast lighting. He noted that the bollard lights that had been modified would not have a spec sheet reflecting the light as it appeared today.

Bentley also spoke to the reality of the lights; he feels that Belanger's concerns are a bit out of perspective. If you look out of his windows and there are any lights at all you will see them. Seeing lights is not the same as lights shining into the house. He understands why any lights, from Belanger’s perspective, are more of a nuisance than if there were just darkness, but the reality is that this is a commercial property and light is to be expected. He feels the additional tubes are all in compliance; we will just have to have people go out and see and determine if they are not all the same.

Lawson-Kelleher spoke to the issue of the arborvitae. She stated that after the initial discussion regarding the planting requirements, after leaving the meeting she had questioned the distance between the trees as being sufficient for the trees to thrive. She asked her husband, who has 2 degrees in plant science, and he concurred that the space would not be sufficient for trees of that size. It would kill out the branches and negate the screening effect you are looking for. She then called the Agricultural Agent at the Cooperative Extension

who confirmed this and provided Lawson-Kelleher with information. She then passed on what she was told to Saba and brought the information into the Planning Board office so she could run it by the Board with the hopes of amending that requirement to allow for 4-foot on center rather than 2-foot on center.

Kinyon requested that when the Board makes a decision there be enforcement that the action be done. He noted that Belanger has not proceeded with his lawsuit against Saba based on the assumption action would be taken relatively quickly once there was an application before the Planning Board.

McKeon agreed and stated that everyone was aware that there are issues. He asked why does the Board not require that all lights in non-compliance of the 2007 approval that are not a requirement to comply with life safety matters be turned off until ready for viewing.

Del Sesto reviewed the order of events leading up to now and stated that we are attempting to resolve the issues.

Saba submits that he is the one being manipulated, that it is not he manipulating the Board. He maintains that he has done everything in his power to meet the requirements of the Planning Board and Code Enforcement and has tried to work with his neighbor. He is simply trying to comply with all requirements and get final approval for the site.

Lawson-Kelleher asked when Saba has fulfilled requests that he let the Board know in a timely manner.

Saba pointed out that he has spent millions of dollars in an attempt to improve the site and be able to run his business; it makes no sense to go to such expense simply to annoy his neighbors or try to manipulate the Planning Board.

Lawson-Kelleher and Del Sesto noted that some changes were definitely for the better.

Del Sesto noted that Kinyon did have a point; there is not a fixture on site that a spec sheet would not be available for, as is or modified. The Planning Board should have all on file with any relevant documentation.

Bentley spoke to the issue of the arborvitaes. He stated that he did not think there was anyone in the room that would want to see the trees planted incorrectly.

Belanger provided a photograph of the arborvitaes he had just recently planted. They are in the same 8-to-10-foot height range. Del Sesto stated that Belanger's photograph appears to reflect that he planted trees of approximately the same height as the Planning Board is requiring Saba to plant at almost 4-feet apart.

Lawson-Kelleher retrieved the information from the cooperative extension that had been placed in the file the night of the July 20, 2009 Planning Board meeting and read it aloud so that the Board could consider the matter. The recommendation was to plant trees of this height 4 feet from fences and 4 feet apart.

Bentley conferred with Saba and stated to the Board that if there were any way to obtain the trees, Saba would have a professionals plant the arborvitaes within 30 days. All parties agreed on the 4-foot distance.

Del Sesto moved to amend the motion passed on July 6, 2009 requiring Saba to plant 30-58 arborvitaes, 8- to 10-foot in height, 2-foot on center, to a quantity of 15-29 arborvitaes, 8- to 10-foot in height, 4-foot on center. North seconded the motion.

Frohn moved to amend the motion to include the requirement that planting be completed by the Planning Board meeting to be held on October 19, 2009. North seconded the motion, which passed unanimously.

The amended motion was voted on, and passed unanimously.

Bentley submitted a waiver request to extend the time clock to November 30, 2009, signed by Saba.

Del Sesto moved to continue to a site visit on Tuesday October 13, 2009 at 7:00 p.m. at Riverside Hotel, to be taken up at a continuation of the public hearing in the Town Offices at 7:30 p.m. on Monday, November 2, 2009. Frohn seconded the motion.

Del Sesto moved to amend the motion to include a deadline for final submittals to the Planning Board office by October 26, 2009. Frohn seconded and the motion carried unanimously.

Del Sesto noted that if for any reason the planting did not occur by the specified deadline, he expected good, solid documentation of a reason it could not happen. Bentley agreed wholeheartedly.

The amended motion was voted on, and passed unanimously.

Lawson-Kelleher noted that since there will be a change in staffing in progress, if there is any new information from either party in the interim, she is to be contacted by telephone. All parties agreed and have her telephone number.

Del Sesto moved to amend the July 20, 2009 motion regarding the 4 pole-mounted lights in the parking lot to state that they must "be no more than 15 feet from finished grade to the highest point of each of the four lights."

Pierre feels this is a better option than he is currently faced with.

After much Board discussion, Frohn seconded Del Sesto's motion, and the motion carried unanimously.

Items for Discussion

- **Planning Board Budget** – Budget information received from Rick Carrier was reviewed. The Board would like to add another \$600 to the Office Supplies & Equipment line to purchase a hanging plat file; the money can be offset by savings anticipated on the Planning

Board Secretary line, as it is expected the new secretary will be hired at a lower rate of pay than Blum who has been employed by the Town for four years.

Frohn moved that the Planning Board recommend reducing the Planning Board Secretary line by \$600.00 and increasing the Office Supplies & Equipment line by \$600.00. North seconded, and the motion carried by unanimous decision.

- **Ordinance Review Session** – Review of Sections I-III: tabled.
- **Cheshire County Registry of Deeds** – Plat Law Fact Sheet and information distributed for review to all Planning Board members.

Items for Information

- **Jim Larkin/Select Board correspondence** –Re: Notice for Savings Bank of Walpole that Letter of Credit #05-01-06 for Pond Brook Road subdivision will not be renewed and will expire on May 1, 2010. McKeon gave an overview of the status to the Planning Board. The Select Board had already spoken to the Town’s attorney for advice and is now soliciting more advice on this matter.
- **SWRPC** – Commission Highlights: July/August 2009 edition
- **SWRPC** – Letter to Lawson-Kelleher dated 9/2/09 re: Technical Assistance for Water Quality Related Ordinance
- The list of certified wetlands scientists licensed in the State of NH obtained by Lawson-Kelleher from NRCS to be placed on file in the Planning Board office.
- **Winchester Planning Board** – Proposed Site Plan Review Application, Site Walk and Balloon Test: Cingular wireless PCS, LLC Telecommunications Facility at property located between Michigan Street & Forest Lake Road –
 - 09-19-09: Balloon Test – 6:30 a.m. – 1:30 p.m. (rain date 09-20-09, same time)
 - 09-19-09: Site Walk – 9:00 a.m. (rain date 09-20-09, same time)
 - 09-21-09: Public Hearing – 7:30 p.m. to convene on the Main Floor of the Winchester Town Hall.
- **Letter of Resignation** – Elaine Levlocke has submitted her notice of resignation from the Planning Board and as the Board’s representative for SWRPC, effective immediately (09-17-09).
- **Letter of Resignation** – Patricia Blum has submitted her 2 weeks notice; resignation effective week ending 10-03-09.

Adjournment

Del Sesto moved to adjourn at 11:11 p.m. North seconded the motion, which carried unanimously.

Respectfully Submitted by:

Patricia L. Blum

Approved by:

Susan Lawson-Kelleher, Chairman

Date