

Barrington Planning Board Meeting  
Meeting Room, Town Administration Building  
April 2, 2009 - 7:00 PM  
Public Hearings with applicants

Members present: Chairman John Huckins  
Selectwoman Jackie Kessler  
Edward Lemos  
David Mott  
David Vincent  
Michael Clark (Alt)  
Dawn Hatch (Alt)

Chairman Huckins opened the meeting at 7:00 PM. He introduced the members. The meeting was taped for future reference. The first hearing was opened.

**LL 09/365 – Anne Whitney / Michael Moroukian & Denise Hart**  
**Lot line revision – France Road**  
**Map 117, Lot 256 - Map 26, Lot 47**

David Vincent recused himself from the hearing. He represented the applicants, Ann Whitney, Michael Moroukian, and Denise Hart. Huckins gave the members the opportunity to review the letter from Attorney William Tanguay concerning his opinion on what the Board was requiring from the applicants. Huckins said his thinking was in between what Attorney Tanguay represented and what Jae Whitelaw, the Town's Attorney had for their respective opinions.

Mott said this case dealt with soils. Huckins said that we could not let soil requirements go below what was required. Mott said he preferred a discussion between the 2 attorneys. He said he did not want to send the information to the Board from its Attorney to Attorney Tanguay. Lemos said we should authorize the 2 Attorneys to talk. Hatch will call Attorney Whitelaw and tell her we had OKed talking with Attorney Tanguay and if she wanted to forward her communication to the Board to him it would be her decision.

Huckins said the issues remain the same; the parcel was being changed to 2 smaller lots. Mott read Article 4, Section 4.1, Section 1 from Whitelaw's letter which stated that both lots needed to meet the minimum criteria. Vincent said that lot lines have gone before the Board without having to meet this regulation.

Huckins said we needed to go by our zoning. Vincent said the lots would only have to meet the soil requirements; would this include testpits? Mott said a soil scientist could look at the lots and if there was enough upland he could certify this. Huckins said Article 4.1 and 4.2 along with Table 2 would need to be addressed.

Huckins said that the Board could not make a decision until the facts proved out the criteria of zoning. He said the legal issues needed to be worked out. He suggested that the applicants continue their hearing to the May meeting.

Huckins said the Board had used the term building lots when it should have been

buildable lots for the division of the parcel. Huckins said the use of the words building lots was a mistake but the fact remained that the zoning must be met.

Moroukian said they had thought that they had to prove building lots and this was what they represented to their Attorney. Huckins said the lots had to show that there was a minimum size area that would meet the regulations for soils.

Hart said their application was before the Board before this opinion was received from the Attorney so they should not had been made to do more that anyone else that had done a lot line before them. She said it had cost them more money than they had expected and would probably have to sell the land as a result. Hart said the Board should not have changed the rules in the middle of an application. She said other lots had been changed and approved that did not satisfy Table 2.

Hart said all they were asking for was fair and equal treatment. She said the lot line heard before theirs went through without having to do any of these requirements. She said she did not think that they should be the test case. Hart said their application was submitted in January 2009.

Mott said it was a simple interpretation of the zoning. Both Hart and Whitney said to them it was a large change. Moroukian said Attorney Tanguay said the Board should not change mid stream whether the lot line revision was major or minor. Huckins said the Board had the right to make the requirements for the standards met.

Hart said she felt that imposing this situation the lots would need to be developed and their intent was for estate purposes. She said the costs continue to go up and up. Hart said it was not fair to state the lots had to be building lots not buildable lots. She said they were willing to play by the rules but they wanted fairness Moroukian said he wanted it on the record that they were very frustrated with the process.

Lemos said we had found out that we could not continue hearing lot line revisions in this manner. Huckins asked if they wanted to continue their hearing to May 7. Moroukian said yes. Lemos made a motion to continue the hearing to May 7, seconded by Clark, all in favor. Vincent returned to the Board.

**SR 09/367 – Sunset Rock, LLC & Stephen Brox  
Backland off Tolend Road, Barrington, NH  
Map 220, Lots 12 & 13 / Map 236, Lots 2 & 3  
Expand an existing excavation operation**

George Hall, representing Brox Industries with David Couch, Eric Stevenson, and Robert Baskerville of Bedford Engineering represented the plan. Hall gave some background on the proposal. He said the excavation would be within the lot and area where they were now working. The excavation would deepen the hole.

Hall said there were several parcels, in Dover, Rochester, and Barrington. He said Brox had come before the Board in 1986. He said they had purchased the mineral rights from the abutting property of the University of New Hampshire. Hall said that a condition of this was building an access road out to Tolend Road. He said they had now purchased the University land. Hall said that they had received the permits from the Department of Environmental Services.

Hall said the floor of the excavation would be 100 feet deeper than now exists. He said that they intended to concentrate in one area. He said they had no intention of expanding out.

Hall said the first plan was to cross the wetlands but they had now decided to stay away from the 50 foot wetland buffer and wetlands. He said in the future they might ask for a dredge and fill permit but the reserves were minimal. Hall said there was not enough material there to spend a lot of money in today's economy.

Lemos asked if the existing floor was at 100 feet would this same area become 200 feet deep. Hall said yes, he said they bench every 50 feet. He said the water from washing the aggregate was pumped to a detention pond and then back to the Isinglass River. He said they recycle water into the aquifer to the River and Dover's wells.

Hall said the additional dept would be all rock by going deeper so there would be no soil to remove. Vincent asked what would happen when the operation was done, a large lake. Hall said there were 2 options, either an industrial park or a residential development with the lake as an amenity.

Huckins asked about the reclamation plan. Hall said with the benches there would not be a straight drop. Mott said there would be a hole in the ground with drops to the bench elevations. He said this would be pit mining like was done out West. He said the Tolend Road elevation was 180 and the pit would be 150 feet deeper.

Mott asked if it would be the same depth as in Dover. Hall said there was sand in the Dover area. He said that the sand and gravel operation was above the water table. Hall said there had to be a rock barrier to prevent water from coming in the Barrington area. He said the excavation would be on an 80 acre+ parcel, 3000 feet from the Barrington town line. Hall said they tried to keep a very low visibility with the operation not seen from the town road or abutting homes.

Kessler asked about a sitewalk. Douglas Hatch Jr., Chairman of the Conservation Commission spoke on the meeting that they had had with the applicants. He said at the meetings they had represented that there would be a wetland crossing. There had been talk of mitigation and giving an area for an easement. Members of the Commission walked the site and found the wetland was of low value. He said they did not see the need for an environmental report as the area had already been disturbed. Hatch Jr. said at the last meeting with Brox representatives they stated that they did not intend to impact the wetland with an access to the site.

Hatch said she had talked with Joe Lowery of Berger Group who had the information from Brox and would send an estimate for services as soon as the application was accepted. She said he asked about a possible environmental assessment.

Huckins and Vincent said the operation would be within a disturbed area and the expansion would be within the existing operation. The Board did not see a need for this study and review. Hall said they would have NH Soils address the procedure and get the information to the Board.

There were no abutters present and no additional comments. Mott said the list of items from the review workshop were drafting items. Robert Baskerville said they would include the subdivision done by TriTech in the plan set. Vincent said the final plan needed a stamp of the soil scientist as the plan was using his information. Lemos made a motion to accept the application, seconded by Vincent, all in favor.

**LL 09/223 – Kevin Canepa / William Henderson**  
**Lot line revision – Liberty Lane**  
**Map 110, lots 0027 & 0028**

Kevin Canepa represented his plan. He said he and his abutter William Henderson were doing an equal swap of land. He said there was an existing house on each lot. Canepa said Henderson had built toward the back of his lot. He said he would get the frontage with the back to Henderson. Canepa said the front looked like it belonged with his lot. He said when the revision was completed he would maintain the area.

Mott asked if Canepa had seen the items on the list from the review session. Hatch said she had sent it to James M.Lavelle Associates, LLC, surveyors for the project as the items would be done by them.

Vincent said the items in the list were available and the surveyor could easily include them on the plan as needed for the lot line revision. The required uplands needed to be shown that they were not lessened by the swap. The total amount of uplands was needed on the plan. The wetland scientist could certify that the wetland delineation would not change the amount of upland.

There were no abutters present. Canepa was given the list sent to his surveyor. He said he would contact him on Friday. Huckins asked if Canepa wanted to continue his hearing. He said yes. Vincent made a motion to continue the hearing to May 7, seconded by Lemos, all in favor. The hearings were closed.

#### **Non-public session – legal issues – 3/26/2009**

Huckins asked if the members wanted to vote to seal the minutes from the conference with Attorney Whitelaw held on March 26. Vincent made a motion to seal the minutes of March 26, seconded by Lemos, all in favor.

#### **Stephen Brown possible subdivision – Colcord Road**

The members said there had been a great deal of time spent on this issue. Attorney Whitelaw said the paper street could be used as frontage. It could be used for access if Brown got written permission from the owner, Tim Mason. The road would need to be built to subdivision specifications 300 feet in from Colcord Road to the end of his lots. Members said this would probably cost more than the lot value.

The berm would need to be moved beyond the lots. The length of the road exceeded 1000 feet so a waiver would be needed. Huckins said another issue could be the possible requirement of a cistern as the number of lots would be increased.

Mott said each case was unique so each was a learning process on the basics. Huckins said Hatch should contact Joel Runnals, Norway Plains of the opinion of the Board's consul.

#### **The Board moved to a non-public meeting to read the communications from the Attorney at 8:30 The Board moved out of non-public session at 8:40.**

The Board discussed the zoning changes that had been voted on at the March town meeting. The communication from Attorney Whitelaw pointed out the problems with the changes. Kessler said the Selectmen had voted not to support the zoning changes. She said that the Code Enforcement officer would not enforce a violation.

Hatch asked to express her opinion. She said she could not see spending good money to keep these few definition changes. She said we were now in April and would

be starting to discuss possible changes for 2010 by September, with postings in November. We could grant special use permits to address the issues of wells and driveways in the buffer.

Mott said he thought that it would be a good idea to hold a joint meeting with the Selectmen. Huckins said he not think that it was the authority of either Board to approve or disapprove zoning changes. He said he thought that it would be up to the Attorney General's office.

Hatch said to her it makes more sense to agree with the Selectmen and do one thing that would show joint support. It does not make sense to support the changes which could cost money from a possible lawsuit defending them. It would not be fair to the voters to create an expensive situation. Mott said he agreed with Hatch and felt that our efforts could be better used creating changes that would address the issues for the next Town Meeting. Vincent also agreed.

Huckins asked each member to state their opinion. Each said that this would be the least costly and best decision on the changes. The decision to not support the changes was unanimous. Hatch said there should be something in the paper and on the website to let people know of this joint decision. All agreed. Huckins said he would attend the Selectmen's meeting and represent the decision of the Board.

The meeting adjourned at 9:20 PM, motion by Lemos, seconded by Vincent, all in favor. The next meeting will be held on April 9. Conferences with David Snith and Ronert Achmakjian have been scheduled. The Conservation Commission and the Board will hold a joint meeting on April 23.

Dawn Hatch, Clerk