

**MINUTES  
CHARLESTOWN PLANNING BOARD  
JULY 7, 2009**

Members Present: Robert Frizzell –Chair; Sharon Francis –Vice-Chair; Doug Ring – Ex-Officio; Andy Jellie, Eric Lutz, Pat Royce

Alternates Present: Herb Greenwood

Staff Present: David Edkins – Planning & Zoning Administrator  
Regina Borden – Recording Secretary

**CALL TO ORDER & SEATING OF ALTERNATES:** Robert Frizzell called the meeting to order at 7:00 PM. The absence of regular member Ken Moore and alternate member Linda Stewart was noted. He called upon alternate member Herb Greenwood to sit in Ken Moore’s place on the Board.

**APPROVAL OF MINUTES OF JUNE 16, 2009:**

**Mrs. Francis moved to approve the Minutes of the June 16, 2009 meeting. Mrs. Royce seconded the motion. Mrs. Francis amended the motion to add the following omission: Page 3, after Tom Adams comment, add “Mrs. Francis commented that she was surprised that several people knew how she was going to vote since she herself did not know how she would vote when called upon, until she heard what was going to be presented”. Mrs. Royce pointed out a spelling correction on page 1, under Joel Stoddard, third line, change “locates” to “located”. With seven members in favor, the minutes were approved as amended.**

**CEDA – Sign Permit – Fling Road/George Moulton Way – Map 116, Lot 37 – Zone E (Mixed Use):** Bill Sullivan, representing CEDA, advised that this will be a new sign located close to where the old sign is but the existing sign is on the State’s right-of-way so it might be closer to the actual park. It will be lit externally. Mr. Edkins noted that this is a more permanent sign. Mrs. Francis said usually the PB gets a sketch of the exact sign, size and lettering. It should have a good design, color and be in good taste. Mr. Lutz asked if it would be illuminated all night or will it have a timer. Mr. Sullivan was not sure of the specifics. Mr. Edkins advised that there is a need to expedite this approval as the funding will come out of the CDBG that they want to close out as soon as possible.

**Mrs. Francis moved to table this application until CEDA has the design of the sign and other detailed information on the lighting. Mr. Lutz seconded the motion. With six members in favor, the motion was approved. Mr. Ring was opposed due to the time factor involved.**

**PUBLIC HEARING – Revocation of Site Plan Approval – ROBERT & KELLY SCOTT d/b/a R&K TOWING – Short-Term Storage of Towed/Impounded Motor**

**Vehicles – 121 Almar Street – Map 235, Lot 10 – Zone E (Mixed Use):** Mr. Frizzell called this Public Hearing to order at 7:14 PM. Robert and Kelly Scott and their Attorney Dan Smith were present. Attorney Smith noted that they are present to answer to a notice of a Public Hearing where the PB will consider whether or not it is appropriate to revoke the Scott's Site Plan approval because of complaints from the abutting neighbors. They are here to listen to the PB, give their explanation and what the facts are and hopefully the conclusion that the PB will come to is that there have not been any violations or any that would compel the revocation of the Scott's Site Plan approval to operate. Revocation is the harshest thing the PB can do; the PB has other tools available to them in accordance with "RSA 676:4-a - Revocation of Recorded Approval". He questioned if some of the PB members had visited the site to come to their own conclusions. Mr. Edkins was last there in early May and took a few photos. Attorney Scott noted that the Scotts had written a letter to the PB at the end of last month; they did not think they had violated their Site Plan approval. Attorney Smith spent some time there today; he was expecting a bigger operation. They seemed to be complying with the conditional requirements; drip pans and absorbent materials were present on-site, some screening was done voluntarily including some trees and a new 6' stockade fence. Their area for the storage of vehicles was to be limited to an "L" shaped area of land that was paved in 2006. Tonight there were four vehicles plus a tow truck that were well within the areas they were supposed to be. There were a few areas that indicated old dripping that might have been from family vehicles. Tonight every vehicle had a drip pan under it. He asked the PB to look at the area. It would be easy to see non-compliance issues if any were present.

Mr. Frizzell stated that all the PB is concerned with tonight is compliance with the original approval conditions. There will be no personal issues raised. Mr. Jellie referred to the memo forwarded to the PB and asked if the third paragraph was based on the RSAs. Mr. Edkins explained that it is not statutory but based more on common sense. Revocation is usually the last and final step; the first step is to notify the applicant of the violation and give them an opportunity to correct it. Attorney Smith agreed with Mr. Edkins. He read one case heard by the Supreme Court. "Judiciously" means that you do not use revocation in the first instance.

Rebecca Clark stated that all the traffic going to the Scott property is deteriorating their driveway; they own the driveway but Scotts have a deeded right-of-way. A few years ago they discovered that their leach field is under that roadway. When the problem appeared they had to close off that portion of the leach field and have it re-routed. Pictures that the Clarks submitted were viewed (pictures of the car hauler trucks, lawn damage, etc.). They have added material to the roadway at least twice. Mr. Scott noted that his kids now go thru the trailer park driveway and park on the other side of his mobile home. The only deeded access to the Scott property is through the Clark driveway. Mrs. Clark displayed the Town tax map showing the layout of the properties. Mr. Jellie asked if the business or use of the driveway has changed. Mrs. Clark said they have owned their property for seven years but now the trucks are bigger.

Mrs. Francis referenced the previous 2006 meeting minutes; the deeded right-of-way was not an issue then because the Clarks did not raise it as an issue. Mrs. Clark said their original agreement with the Scotts was that if something got broke they fixed it. Mr. Edkins noted that when this application came before this Board there was a good deal of concern about using a deeded right-of-way for business purposes but at that time the Clarks said they did not have any objections as it had been used in that way for quite some time. The original approval was largely based on the Clarks' support. Mrs. Clark said they did not know their septic went under the road until two years ago when the problem appeared.

Mrs. Clark noted that the drip pans are on an angle so when it rains the oil is still going over the edge. She submitted additional pictures that were viewed. Attorney Smith felt it was hard to tell from the pictures as this evening there were water and mud puddles in the area; the Scotts agreed. Mr. Scott explained that sometimes the stored vehicles only have windshield, hood and roof damage from hitting a deer; they do not require a drip pan but from now on everything will get a drip pan. Some vehicles are impounded due to DWIs or misuse of plates but there is no damage. Mrs. Clark said they do not object to the Scotts personal vehicles.

Mr. Ring asked how many times the bigger trucks go in. The original permit indicated that vehicles were stored until the insurance company could check them. Attorney Smith responded that those haulers have been going in on a regular basis even before the Site Plan Review was filed. Mr. Scott said the two car carriers go in maybe four times a month; the three car carriers maybe once in a while but usually he brings the vehicles out to the end of the road for them to pick-up the vehicles. Mrs. Clark remembered one incident when there was driver error, they spoke to them and it was corrected. The Clarks spoke of their posts being knocked down; two are still on the ground. Mr. Scott said he did not run over the Clark's posts otherwise he would have paid for them but he won't pay for something he did not do. Attorney Smith looked around at the edges of the property but did not see any evidence of damage to the Clarks lawn; there might have been a rare occasion but now the Scotts are more aware of being cautious. The Scotts hired a surveyor who set stakes so it is now clear where the boundary lines are.

Mr. Jellie asked if the fence solves the screening problem. Mrs. Clark said "some"; it does in the back but not along the sides. Mr. Frizzell questioned the paving. Attorney Smith explained that the paving was gone over carefully between the Scotts and the Clarks; they both agreed and approved on where it would go. It is in the same footprint of the dirt; there was no grass there. The Scotts come in the right-of-way off the road and then go behind the Clarks house, utilize that turn-around portion of the driveway to head toward the Scott house. They have been using that turn-around for 16 years as did the previous owners. The Clarks also use that portion of the paved area. Attorney Smith, with verification from Mr. Scott and Mrs. Clark, outlined how the traffic flows for the PB. Mr. Edkins read the portion of the Scott's Deed referencing the right-of-way. Mr. Ring did not feel it was up to the PB to make a decision on the asphalt placement. Mr. Edkins explained that it is only to the extent that the allegation was made that the paving encroached onto the Clark's property beyond the use of the driveway itself. Attorney

Smith said there is no business use outside of the “L” area. The Scotts have never blocked the Clarks from their property.

Paul Weaver stated that a lot of the area is all wetland. Even if you have drip pans the drainage is still going down to the brook. Attorney Smith said there should not be any drainage issues.

Fred Poisson advised that he stepped off the Board when this was first being heard. His biggest comment was that the trucks that pick up these vehicles are a lot bigger than Scott’s truck. Almar Street was not intended for trucks. Mr. Scott said he does pull vehicles out to the street for the bigger carrier trucks but it is not in the meeting minutes. Mr. Jellie felt it was the PB’s position for the trucks to go there to avoid a jam-up on Main Street by the gas station. Mrs. Clark talked to Keith Weed, Highway Superintendent, who said Almar Street is supposed to be posted. Mr. Edkins noted that they usually post all Class V roads in the spring but there are provisions for certain types of businesses to have the opportunity to get a waiver by posting a bond to cover any damages.

Attorney Smith noted that both Deeds (Scotts’ and Clarks’) include language that they both share the costs of maintaining the road. Mr. Clark stated that he will not put any more money into the road; sure-pack just sinks in. Mr. Edkins advised that maintenance is a civil issue between the two parties.

Roger Thibodeau noted that as a PB they need to be sure that this business does not encroach on the neighbor’s property in addition to the drip pans, screening, etc. Mr. Edkins pointed out that at the time the two parties were in agreement. Attorney Smith noted that the property is not being used any differently than when the Site Plan approval was granted. The Clarks knew what the business would entail and supported it; since then they have had some personal fallings out.

Mr. Ring stated that from the pictures he has seen some inadequate drip pans and pictures with dual wheel tracks. Those are his two complaints.

Mr. Weaver stated that the business gets bigger and bigger all the time. It is noisy at 2:00 and 3:00 am; Scott is moving vehicles in there all the time. It isn’t a place for a business. He does not count cars.

There was discussion relative to scheduling a site visit. Mr. Jellie went there and didn’t see more than eight cars. The business has not expanded. It seems like things have been corrected. Maybe there should just be a follow-up in six months. Mr. Frizzell said the driveway is a civil issue. Mr. Greenwood would like to do a site visit to look at the septic system but it was pointed out that the septic system is not a part of this Public Hearing.

Mrs. Francis provided a summary of the issues leading up to this Public Hearing. Mrs. Clark would be in favor of more screening. Mr. Scott advised that when this is settled he

plans to put up a rolling fence/gate from the corner of his house over to the stockade fence; the cost would be about \$1,000.

**Mr. Ring moved to put Robert & Kelly Scott d/b/a R&K Towing on a six month probation to make sure that these items stay the way they are supposed to be. They know what the problems are and are willing to comply with them. A PB representative will monitor it monthly and bring the results back to the PB. Mr. Jellie seconded the motion and amended it to add that the new fence (gate) be in place by the end of the probation period. Mr. Ring agreed to the amendment.**

Mr. Scott is willing to put the fence gate, on wheels, within six months. There was discussion about the Town not getting involved in mandating road maintenance. It might have to go to court to be resolved but that would incur legal expenses for the two property owners.

Attorney Smith said for the record he feels the PB is going in the right direction except for the use of the term “probation” because the implication would be that the Scotts did something wrong. A fair characterization is that there isn’t any conclusive evidence that anything was done wrong but if something was done wrong it was minor. He would prefer “continued”.

**Mr. Ring agreed to amend the motion wording from “six month probation” to “review the premises periodically for six months”.**

Mr. Lutz is not in favor of putting Mr. Edkins in the position of a policeman but for the time being if they want to have another PB member do the monitoring he would be in favor of that. Mr. Edkins would be agreeable to do a periodic compliance inspection and report back to the PB.

Mr. Scott asked for clarification on what will happen after the six months. Mr. Ring explained that after six months if there are no violations it would disappear unless there is another legitimate complaint. Mr. Ring said there will be inspections at least once a month and at the end of six months the gate should be up

**Vote on the amended motion: With seven members in favor, the motion passed.**

#### **PLANNING & POLICY ISSUES:**

**Fire Department:** Fire Chief Gary Wallace and Fireman John McCann wanted to make the PB aware that the Fire department is looking for grants this year. One grant will be for \$375,000 for a new fire truck. The second grant will be for about \$850,000 to do work on the Fire Station. The building needs to be brought up to ADA regulations, needs a new heating system, drainage work and a new roof; make it a “green” building. It was built in 1974 and, with renovations they hope it will last another 30 years. They would like to add three new bays. It is anticipated that the grant for the building will be 100%

funded but they might have to raise some money toward the fire truck. They are writing the grant applications themselves. The building grant will not impact the possibility of putting a police department building on the same property. Mr. Edkins explained that traditionally government land uses are exempt from Site Plan Review but if it constitutes a substantial change in use or new use they could be required to submit plans for PB review. The PB could hold a Public Hearing and then issue non-binding recommendations. Mr. Frizzell thanked them for keeping the PB in the loop. Mr. Edkins announced that a Paul Hodes staff person will be in Town next Wednesday at 2:30 pm in the Community Room. They should be brought in the loop for the fire truck and the building. Chief Wallace said they are in desperate need of the new fire truck. John McCann is at the Fire Station every afternoon and would be happy to provide facts and figures to interested parties.

**Zoning Amendment – Lot Size Averaging:** Mr. Edkins continues to work on this.

**Applications:** Mr. Thibodeau feels there is a need for a professionally drawn site plan with boundaries for every application. Mrs. Francis said tax maps are not adequate in some cases; there should be an engineered plan.

**ADMINISTRATION & CORRESPONDENCE:** None.

**Next Meeting:** The next meeting is scheduled for Tuesday, July 21, 2009, at 7:00 PM.

**ADJOURNMENT:**

**There being no other business, Mr. Lutz moved for adjournment. Mrs. Royce seconded the motion, with all in favor, meeting adjourned at 9:20 PM.**

Respectfully submitted,  
Regina Borden, Recording Secretary

Minutes Filed: 7-10-09

(**Note:** These are unapproved minutes. Corrections, if necessary, may be found in the minutes of the July 21, 2009, Planning Board meeting.)