

**FRANKLIN PLANNING BOARD
PUBLIC HEARING MEETING
September 28th, 2011**

Call to Order:

- ☐ Pledge of Allegiance.
- ☐ Roll Call

Present: Brian Colburn, Ted Starkweather, Powell Glenn, Bob Sharon, Marty Russo, David Veysey, Brian Sullivan and Planning and Zoning Administrator, Richard Lewis.

Absent: Anthony Daniel, Michael Freeman, Mayor Merrifield, and Anthony Giunta.

Member Sharon was seated in place of absent voting member Mayor Kenneth Merrifield.

Member Veysey was seated in place of absent voting member Anthony Giunta.

- ☐ Approval of Minutes: September 14th, 2011 Meeting

MOTION: Member Sharon moved and Member Russo seconded to approve the minutes of the September 14th, 2011 meeting. Member Starkweather indicated that on page, Sgt. Clough should be changed to Lt. Clough. All were in favor of approving the minutes as amended.

New Business: None.

Old Business

- ☐ Hearing for the purpose of determining whether or not to modify or revoke the Special Use Permit issued, under file number P-11-03, to Mass Investment Group, LLC, on May 25, 2011 for the establishment an assembly use space within the existing mill building. This hearing, and any decision made subsequent thereto, is necessitated by reports from, and concerns raised by, the Franklin Police Department relative to their determination that the operations of the assembly space have not been carried out in conformance with the standards and conditions outlined by the Planning Board in their decision of May 25, 2011.

Chair Colburn stated that the board has received the following items: Draft Conditions and Decision; Property Security Plan; and, Letter response from Attorney Dolder, from Artemis, regarding the draft conditions and decision.

Chair Colburn asked the members of Mass Investment Group if they had anything new to add.

Alex Gorelik was present to speak. He thanked the board for coming to the property to look at the location to have any additional questions answered. He stated that his attorney sent over the Property Security Plan and a response to the draft conditions. He stated some of these conditions will be hard to implement.

The first item he wanted to discuss was the schedule being provided 21 days prior to the event. He stated they would like some flexibility. He stated that for some events they will be able to provide the information 21 days in advance, but some of the events he is looking for approval for the time frame to be changed. He stated they need to be able to accommodate other venues. Mr. Gorelik stated that when bands are in the area, they sometimes call and say they are in town and would like to host an event. He stated that with this type of circumstance only 7 day notice can be given.

Mr. Gorelik stated that they are looking to not have to have a detail for private events, such as weddings and private parties such as birthdays. He stated a police detail is not necessary for these types of events and he doesn't want to lose this business as it is not feasible or affordable to rent the space for these events if they need to pay for a police officer. He stated these types of venues are crucial to this type of business.

Mr. Gorelik stated that they don't believe they should have to pay for every meeting as is indicated by the conditions. He indicated they should be given the ability to fix a problem before a meeting is scheduled and they shouldn't have to pay the added expenses. He stated they have never been given the opportunity to take care of the issues and this public hearing was already scheduled.

Mr. Gorelik indicated that the fights and drug use that were portrayed to have happened on site have not happened. He stated this is probably the safest place in Franklin due to the number of security. He stated there has only been one incident, and this could have been handled differently. He stated they are flawless in their operation, except for this one event. He stated significant changes have been made as far as the events, types of music and the security. He stated if there is a way to improve the business they will do it as they don't want the liability, and they want people to be safe. He stated it is common sense that no business owner wants problems as their establishment.

Mr. Gorelik indicated that Artemis is important to the City of Franklin and even the Chief of Police has indicated that they are attracting people to the city, as he indicated that 60% of the people do not reside in Franklin. He stated he doesn't want to put pressure on other businesses.

Mr. Gorelik wants Artemis to continue to strive and grow and these rules make this impossible. He stated that he came to the City before the meeting and got the idea that the City thought this was a great idea and that the downtown area was the perfect spot. He built the business as it would be good for downtown and not to make money.

Member Colburn stated that the point of condition #1 is to make sure that the police department has enough time to determine if a detail is needed or not and to schedule the detail if necessary. He asked if they had any suggestive changes that they could meet. Mr. Gorelik stated that some events they will have enough notice, but others are musicians doing tours in the area and call and say they are in town and would like to book the hall. He stated in this circumstance they would be able to give at least a 7 day notice. He stated that he doesn't believe that a seven day notice is that big of a difference.

Richard Lewis stated that the intent of this condition is because there has been a pretty regular lack of notice to the Police Department. It is hard for the Chief to schedule for an event the day before it. He stated that 21 days is not set in stone and that this can be discussed further by the board. Alex Gorelik stated that he doesn't want less than 7 days notice for an event, as they cannot get the word out on events. He stated that he can promise that he can get the information to the Chief at least 7 days prior to an event, and that 50% of the events he will be able to give even more of a notice.

There was a lengthy discussion with Mass Investment, the Board and the Police Chief on the time frames for submittal of the schedule. The Police Chief stated that he can get everything scheduled that needs to be done in 7 days.

Chair Colburn indicated that in reference to condition #2 and training. He stated the draft condition has specific training programs outlined. Mr. Gorelik indicated he has few volunteers and more qualified security guards. He stated that guys with years of knowledge are better than those with training. He stated that quality is better. He stated the security has been an issue and they are addressing it.

Chair Colburn asked if they were using guys with prior training or no training at all. James Ethridge was present to speak regarding the security. He has worked in alcohol establishments for 15 years, and stated this business is different because no alcohol is sold and you are dealing with underage kids. He stated that they can submit their resumes. Alex Gorelik stated that the security firm has experience behind them. Jeremy Vachon was present to speak, as the head of Wired for Sound Security. He stated that he has been through training and has worked as a security person for 15-20 years. He stated that all of his guys are trained under him and stated that they were willing to provide their resumes.

Chair Colburn asked if they always will be using the outside security firm or if they will still be using volunteers at some times. Alex Gorelik stated that he will use anyone that has knowledge of security and the venue. He stated he is using more qualified persons. He stated that this company has done four of the shows for them and they started prior to the meeting of May 25th.

Chair Colburn asked if Alex still objects to the wording, now that he is using qualified persons from a firm. Member Starkweather indicated that he is confused and wants to know if they have used this firm for four shows if the Attorney knows that, as this was never mentioned at the meeting or in the letter. Alex Gorelik stated that using this firm is not set in stone. Member Starkweather stated that if they use trained persons, which is what the conditions are about, then where is the problem. He stated the condition should stand as written as it is taken care of by using this firm.

Alex indicated that the wording regarding that the police chief can require additional training is a concern.

Brian Colburn asked what the standards are for volunteers. Alex Gorelik stated they are not taking volunteers unless someone calls in sick. He stated he doesn't want to use volunteers unless they need to make sure that they have four people. Chair Colburn asked Alex if the conditions are okay now that they are using this third party firm for security. Mr. Gorelik stated that he is not sure and that he would need to ask his attorney about this. Chair Colburn stated that the attorney has indicated that they do not like the condition and he stated that new wording could be reviewed by the board. Member Colburn asked if the wording was changed to include a third party security firm, if this would suffice. Yan Shknevsky indicated they don't want to be stuck to one entity. He stated that on Monday they had one single guitarist and stated that four security guards was unnecessary, and that volunteers could have worked that event.

Chair Colburn asked if there was a security plan for events with ten people or less and Mr. Shknevsky indicated that two security guards would suffice for these events. Member Colburn asked if they would be from a hired firm or if they would be volunteers and Mr. Shknevsky indicated it would depend on the venue, he stated that security and details for every event is not necessary. Member Colburn stated that they have a large range of events and stated the board cannot accept a statement that indicates that we will see where it goes. He stated the event of August 12th exposed some serious flaws and the city doesn't want any future problems.

There was a lengthy discussion on this issue. Member Sullivan indicated he thinks the wording should stay as is. The board discussed changing the word "shall" to "should" in 2(b) and in 2(c) changing the word "require" to "recommend". The board indicated that they feel comfortable with the police chief determining the security that is necessary. Member Veysey asked if the Chief felt comfortable when Artemis approached them with a plan of saying who is needed, number of Security persons and their training capabilities. Chief Goldstein indicated that it is difficult to be as specific as the board would like. He stated that an Art Show may not need security, unless the art is being protested. He did state however that 25 people can be an unruly group no matter what the event. He stated that he can't give the board a black and white answer, as this is a matter with a lot of gray area. Chief Goldstein stated that he has contacted Chief

Edwards, at the Liquor Commission, and was informed that the training is for Alcohol use. He stated there isn't any hands-on training. He stated the genesis of the training is as a result of similar types of problems in Manchester. Chief Goldstein stated that some security generates more problems and so Liquor Commission came up with a security protocol. He stated that he was informed by Chief Edwards that the Security training cost nothing, and just needs to be scheduled. He stated that the Liquor Commission will do a walk through of the building and give their opinion on what could be done better. He again reiterated that it only takes 3-4 people to start a riot.

Chair Colburn asked what needs to be done between finding out about an event and the event taking place. Chief Goldstein indicated research is done via the internet on the venue. He stated his Sergeant works on this, he reviewed the venue on line, and he can look into public input on the venue.

Member Veysey asked Chief Goldstein if he is given information on the act, if he can say whether full security and a detail is necessary. Chief Goldstein indicated that he can. He stated that NH Statutes are strict on force allowed by non-law enforcement persons. They are not protected like Law Enforcement personnel are. He stated that having a security firm does not make it so that they will not need a detail. He stated that so far only one officer has been needed. Member Veysey asked for clarification that the Chief needs to know in advance of the event, so that this can be determined or what level of police activity, even if just a courtesy drive by, is necessary. The Chief indicated this was correct.

Angie Carey asked if, based on the Chief's comment regarding Security not having protection under NH Statutes regarding force, if the security company has insurance. Mr. Ethridge indicated they are working on getting insurance currently.

Chair Colburn indicated that on the re-working of number 2, he would recommend that a more event specific security plan be submitted with the number of security staff persons being supplied and the training they have or the name of the firm providing the security be received. Yan Shknevsky stated they are capable of supplying this information. He stated that as far as giving the number of people that would be in attendance, they can give a rough idea but they cannot give an exact number. He stated the information can be provided to the Chief.

Member Sullivan stated that if there are no requirements and the requirement was event specific, that the Chief could approve or ask for additional. Mr. Shknevsky indicated that if the event is under 12 people he doesn't believe security and a police detail is necessary. It was asked what type of event only had 12 people and it was indicated it was a hip hop band. Mr. Shknevsky indicated the officer who is on the detail should have ability to make an assessment on the number and leave if the numbers are low.

Richard Lewis indicated that earlier Mr. Shknevsky indicated that he cannot predict how many people will be at an event and now he is saying that they don't want a detail if the numbers are going to be under 25, when in actuality the numbers could be more. Due to the level of uncertainty that has been brought forward how can the chief make a decision based on the projected numbers. Mr. Shknevsky indicated that most events are small, some are more, they eventually want to get to higher numbers between 125-150, but they aren't there yet. He stated the prediction is difficult, but they can give a ball park.

Attorney Paul Fitzgerald, Counsel for the City of Franklin, stated that he would like to make the point that New Hampshire law clearly states that the board does not have the ability to override the Chief of Police's decision on assembly uses. He stated that what the Chief says is what goes and if the Chief indicates a detail is needed, no one can say differently, including the board. He stated the board is putting time in discussing

good intentions where the Chief has the ultimate say. He stated the applicants have remedies available if the Chief was abusing his decision making on this case.

Richard indicated the board had an earlier discussion regarding the 21 days notice, and a common agreement of seven days appears to work. During the discussion on Security, the Chair asked for suggestions to be brought to the attention of the board. He indicated that better communication is needed and coordination between Artemis and the Police Department. Mr. Lewis asked Chief Goldstein if the board changed the notification period to 7 days if this would cause an undue burden to the Police Department and the Chief and Chief Goldstein stated that it would not.

Mr. Lewis asked the Chief if he felt comfortable that he could determine with Artemis how many Security Guards were needed for an event and what their training level was. Chief Goldstein indicated he does feel comfortable that he can work with Artemis staff on this.

Richard Lewis stated that the second and third sentence of 2(a) has framework that gives the police chief flexibility. Chair Colburn stated that 2(a) stands as is. He stated that B-E is trying to put in the hands of the Police Chief, allowing event by event planning with specific security plans for each event and that the Police Department review the plans to see if enough in house security is being provided and to determine how many detailed officers are needed. Member Sullivan stated that he likes how it is written, after hearing from the City Attorney. He stated that he would like to have added another condition that the liquor commissioner does a site visit and evaluates the business to determine if anything needs tweaking of the site plan and/or security plan. He stated he also would like a condition that if the Liquor commissioner inspection brings forth changes that need to be made that a plan be submitted to planning and zoning regarding any corrective measures required by Liquor Commission staff.

It was indicated that condition #3, regarding private parties, Artemis is requesting to not have a detail for these events. Richard Lewis stated that if the applicant provides the scheduled of all the events, they will have the location booked more than five days in advance for weddings or birthdays, so these would be on the plan that goes to the Chief of Police with the number of guests. Attorney Paul Fitzgerald indicated that a purely private party, that is not open to the public can't be dealt with by Police except for outside parking or disturbances.

Paul Fitzgerald indicated that earlier the owner of Artemis had indicated that they are back before the board because of a lack of responsibility by the city and the owner of Artemis indicated that no response was made by the City. He stated that this has not been true, that the City had set up at least two meetings outside of the board to try and settle this outside of the board, with the City Manager, Planning and Zoning and the Police Department and Artemis was not open to these or did not show up.

Member Veysey stated that VFW, Elks club and other locations have private events not open to the public and do not need a police detail. Attorney Fitzgerald indicated that street traffic, parking would be under jurisdiction of the City. He stated that if the person hosting a private event sells tickets, then this would make it a public event and a detail may be necessary.

Member Sullivan stated it is important that no alcohol be allowed at public events.

Regarding Condition #4, Chair Colburn stated that during the site visit, some of the rooms had locks on them that were in the wrong direction and need to be corrected. He stated that the back door, utilized by the bands, is easy to work. It was recommended that a change be made that changes will be made to the locks to make sure the rest of the building is secure. Richard Lewis indicated that this could be addressed by the

Liquor Commission on their site visit and by Code Enforcement for Life Safety concerns. Member Veysey stated that on this liquor commission walk through that Planning and Zoning, Police, Fire and Code Enforcement be available for the walk through as well.

There was no further discussion on Condition 5.

Regarding Conditions 6 and 7, Brian Colburn indicated that the Board can schedule a public hearing as needed and that the fees being paid or normal notification to abutters and hearing notice information needs to be paid for if the business needs to come back before the board and currently for tonights meeting. Richard Lewis stated that this amount is at the most probably around \$200.00 and stated that in the original approval this was covered regarding rescheduling or modification hearings.

There was no further discussion on Condition 8.

It was indicated that Condition 9 can be part of the safety and security plan.

It was indicated that Condition 10 is straightforward.

It was indicated that condition 11 is within the rights of the Board. Richard Lewis stated that this is just a rewording of the existing wording from the May 25th approval of the board. Richard Lewis stated the attorney did not challenge the May 25th conditions and does not have the ground to challenge the costs, which are relatively minor.

Public Comment

Paul Morrisette was present to speak. He stated that business is needed and that this is the least of the Police Departments concerns in the downtown area. He stated that people hangout downtown at all hours of the day and night and that his should be taken care of. He stated there has been damage to businesses downtown due to this. He stated that expecting them to have a police detail is too much to expect.

He stated it was indicated that the officer can make a decision to go home if an event bombs; however, he stated that if it does an officer who is being paid good money to be on location is not going to decide on their own to go home and miss out on the money and he added that a number should be set.

James Fischer was present to speak. He stated that he runs the internet for Artemis and the social media. He stated that this is the best thing that has happened to Franklin and indicated the city needs a revitalization. He stated that Artemis can bring town pride with their shows. He stated the business is not just about rock bands, but is about wholesome family events. He stated Artemis is not just a business and they want to showcase the finest music and venues to better their reputation and to gain town support.

Public Comment closed.

Board Discussion

The board talked about adjourning so that Richard Lewis could add conditions to the existing document. The board discussion was to make the following changes:

1. Condition #1: 21 days to be changed to 7.
2. Condition #2 (b) shall will be changed to should.

3. Condition #2© required to changed to recommended.

Regarding the following, the numbers of letters may be reworked in the final approval document.

4. Add condition 2(f): At the same time that the police department is notified of the scheduled events (per condition #1), Artemis shall provide the department with their proposed security plan for the event(s). The police department shall review the security plan and provide recommendations to Artemis on their in-house security plan.
5. Add Condition 2(g) The New Hampshire Liquor Commission shall be requested to perform a site inspection of the Artemis facility to provide recommendations as to the management and operations of the facility relative to public safety. This inspection shall be scheduled by the Police Department at the earliest possible convenience for Liquor Commission Staff. Notice of the inspection date and time shall be provided to the Planning and Zoning Office, Police Department, Artemis and the City's Code Enforcement Office.
6. Add Condition 2(h): Following the Liquor Commission inspection of the facility Artemis shall present a plan to the Planning and Zoning office regarding any corrective measures required by Liquor Commission Staff. Further Artemis shall provide a corrective plan addressing the concerns of the board regarding condition #4. This plan shall be reviewed and approved with any necessary modifications by City Staff.
7. Add condition 2(i): Artemis shall submit to the Planning and Zoning Office a signed and dated version of the Security Plan previously submitted via email by their Attorney.
8. Condition #3, change to read: No alcohol is to be served at any public event except as provided for by below...
9. Condition #4, remove the first few words: "If so required by the Police Department..."

The board then recessed.

The board was called back to Order and a copy of the changes to the Conditions document was given to the board.

MOTION: Member Sullivan moved and Member Russo seconded that the Franklin Planning Board move to approve the modifications to the Special Use permit issued to Mass Investment Group, on May 25th, 2011, regarding the establishment of the Assembly use space within the existing mill building located at 20 canal Street, Tax Map/Lot # 117-153-00 and 117-365-00, as discussed and amended by the board this evening.

At this time, Member Veysey indicated that the condition regarding the mention of the signed and dated plan was left out and needs to be added to the conditions. Richard Lewis stated that he would add a condition which would state Artemis shall submit to the Planning and Zoning Office a signed and dated version of the Security Plan previously submitted via email by their Attorney.

Member Colburn indicated that the Planning Board meets routinely and structures conditions and approval so that City Staff can monitor business and work with owners. He stated that very rarely does an application have to come back to the board. He indicated the board has the utmost confidence in City staff to work with applicants. He stated that he is confident that the Police Chief and Richard Lewis can work with the owners and as long as the owners communicate often and early with them that they shouldn't be back before the board again.

All were in favor and the motion passed.

Public Comment: None.

Other Business: None.

Planner's Update

Richard Lewis indicated that the downtown project is moving along rather well. He stated that there has been a lot of cooperation from the downtown business owners and residents. He stated that the paving should be finished up on the next 2-3 weeks. He indicated that the last thing will be the placing of the new poles and light heads at Smith Street and this might not be completed until November or December, that the lights need to be ordered and will take some time to get in.

Adjournment

MOTION: Member Veysey moved and Member Russo seconded to adjourn the September 28th, 2011 Regular Meeting of the Franklin Planning Board at 9:27 p.m. All were in favor and the motion passed. The meeting was adjourned at 9:27 p.m.

Respectfully Submitted,

Angela M. Carey,
Planning and Zoning Office
Assistant to the Administrator