

TOWN OF JAFFREY
Jaffrey, New Hampshire

BOARD OF ADJUSTMENT
Meeting Minutes
January 6, 2009

Present: Chairman Sawyer, Members Belletete, Campbell, Dumont and Webber

Absent: Member Dodge

Staff: Recording Secretary Lemire, Building Inspector Baron, Town Counsel T. Kinder

MEETING MINUTES APPROVAL

On a motion by Webber, seconded by Dumont, the minutes for the December 2, 2008 meeting were approved as presented. (5-0)

PUBLIC HEARING

Chairman Sawyer called the public hearing to order at 7:34 p.m. The rules of procedure were read aloud. Notice of hearing for case No. ZBA 08-20 and ZBA 09-01 as advertised in the *Monadnock Ledger-Transcript*; copies were posted in the Town Office building and the Library; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen; and notice of hearing was sent by certified mail to all abutters whose names were provided by the applicants. Prior to the presentations Chairman Sawyer announced that case number ZBA 08-20, although listed first on the agenda, would be heard last.

Public Hearing - New Items

1. ZBA 08-20; Orr & Reno Professional Association (on behalf of The Society F/T Protection of New Hampshire Forests and Jaffrey Residents)

Administrative Appeal – The applicant appeals the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated)

Presentation: No one present

Appearance:

Member Campbell recused himself.

Attorney Kinder stated for the record that this hearing was first scheduled for Friday, December 12, 2008 and all abutters were sent notices of that hearing. However due to the ice storm the meeting was postponed until tonight and all abutters were again sent certified notices.

Chairman Sawyer acknowledged and read aloud two letters submitted to the board. The first letter was dated December 22, 2008 from Attorney John Ratigan which addressed the issues raised by the Royce appeal. In summary the letter spoke to Count XI in which Attorney Ratigan understood that proper notice had been given by the Planning Board to the Regional Planning Commission and to the Towns of Dublin, Marlborough and Troy. He also understands that copies of the meeting minutes were not forwarded by the Planning Board to these three municipalities or to the Regional Planning Commission as required by RSA 36:57, II. The letter further stated that no one would dispute that actual notice was provided to the municipalities and “in fact the municipalities have provided comments to this Board and to the Planning Board at various points during the prior proceedings, and those comments have been incorporated into the

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record of the matters which are under appeal”. Attorney Ratigan stated in his letter that S.W.R.P.C. was provided an initial set of plans as required by RSA 36:57, II when the application was first before the Board. The application has been treated by the board and the Court as a continuous application and Attorney Ratigan believes the earlier set of plans given to S.W.R.P.C. satisfied this RSA 36:57, II requirement.

With respect to the other issue raised Attorney Ratigan “noted that the appellants, Royce, et al, have filed a similar appeal from an earlier Planning Board decision to this Board, which the ZBA addressed at its August 7, 2007 meeting. Attorney Ratigan wrote “the way in which the Board handled that issue at its August 7, 2007 meeting was proper and your treatment was vindicated by Judge Arnold’s decision”.

The second letter read by Chairman Sawyer was dated January 5, 2009 from Edward Germain, Selectmen with the Town of Dublin, on behalf of the Town of Dublin and the Selectmen. Mr. Germain’s letter expressed their concern regarding the Planning Board hearing process in regard to the August 2008 application for a 28 unit OSDP (PB 08-14) which was subsequently consolidated with PB 04-33 and PB 06-20. Specifically, the September 9, 2008 public hearing in which Dublin does not have any record indicating that it ever received notice of the public hearing, nor a copy of the meeting minutes as required by RSA 36:57. According to the letter lack of notification was the reason that no one attended the September 9th meeting on behalf of the Town. Additionally, the Town of Dublin states that they did not receive notice of an October 14th 2008 deliberative session again being the reason why there was no representation for Dublin. Mr. Germain wrote that Dublin has been prejudiced because it was denied the opportunity to participate in the Board’s review of a development of regional impact.

According to Mr. Germain, S.W.R.P.C. said they never received plans for the August 2008 OSDP application in violation of RSA 36:57, II. Because the Board failed to satisfy the requirements of RSA 36:56 and 36:57, it lacked jurisdiction to issue the October 14th decision. In closing Mr. Germain wrote “We do not address the underlying merits of Mr. Van Dyke’s application because we have not attended the public hearings, nor do we have sufficient information regarding the details of the application.

Attorney Kinder stated that the case is consolidated and has been treated so by the Board and the Court. What is before the Zoning Board is the complete record of the consolidated proceedings going back to the beginning of the process, including prior decisions of the Planning Board, decisions by the Zoning Board and decisions by the Court.

Jaffrey resident and one of the litigants Mr. Ken Campbell stated that a four member board versus a 5 member board was acceptable. Mr. Campbell is also a member of the Zoning Board of Adjustment and he recused himself from this case. Mr. Campbell submitted a statement to the board which in summary stated that over the past 3 ½ years the Royce and Forest Society group has sought to persuade the ZBA and the Planning Board to follow the zoning laws of the state of New Hampshire and the Town of Jaffrey. The core of this case, in their judgment, is that the Town of Jaffrey failed to follow the letter and spirit of the State and municipal zoning laws.

The issues again involve the state’s Regional Impact law, NH RSA 36:56 and 57, Review of Development of Regional Impact. As was written in his statement, Mr. Campbell read parts of RSA 36:56 and 36:57 aloud because he feels the ZBA continues to state this is not a case of potential regional impact and the Planning Board states that it is a case of regional impact.

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Mr. Campbell reminded the board that Judge John Arnold voided the decisions of the ZBA and the Planning Board because of the failure to notify the regional abutters. Judge Arnold also found that Van Dyke's proposed development is one which has a potential regional impact.

Mr. Campbell urged the board to examine the arguments made by Orr & Reno Attorneys and to grant the appeal of the Planning Board's decision of October 14, 2008.

Attorney Kinder asked Chairman Sawyer to confirm whether or not there was representation from S.W.R.P.C. or from the Town of Dublin or any of the other towns. There was no response from the audience.

Attorney Kinder stated that the record reflects that S.W.R.P.C. and all the towns were mailed notices and that the postal receipts are in the planning board file. This was confirmed by Recording Secretary Lemire. Attorney Kinder commented to the board that there has been no indication to the Planning or Zoning Board until the recent letter from the Town of Dublin that the Planning Commission or any of the towns wished to participate in the matter under appeal. Notices were provided and they had an opportunity for input however they did not provide written or oral input. The Dublin letter says they were prejudiced yet they presented nothing in their letter to indicate how they were prejudiced, or how they would have acted differently. It would seem if there was evidence of prejudice it would be brought forward. Referring to Attorney Ratigan's letter, Attorney Kinder commented that S.W.R.P.C. did receive copies of the plans, although previous versions, which would indicate that they were aware of the general project and that they have seen plans and the plans were available for them to review if they wanted to.

Jaffrey resident Ann Webb asked for clarification as to what the board would be voting on. Attorney Kinder went over each count and explained that the board would be reviewing and voting on each count as it was listed in the appeal.

Jaffrey resident Ann Royce asked if meeting minutes were sent out to S.W.R.P.C. and the abutting towns and if not should they be. Chairman Sawyer stated that they were not. Attorney Kinder added that the statute has certain requirements, one of which is sending the minutes out and that was not done. This is one of the issues before the Zoning Board. They must decide if this was prejudicial to the parties who were entitled to receive the minutes. The factor the board has to consider is whether the parties have appeared to present evidence. Have they communicated in writing? Have they stated why they think they were prejudiced?

Jaffrey resident Casius Webb pointed out that the towns have been present at many of the past meetings and spoke on many of the issues.

There being no further comments, Chairman Sawyer closed the public hearing for this item.

The board with the assistance of Attorney Kinder reviewed and discussed each count. The decisions were as follows:

Count XI – Failure to provide adequate notice regarding regional impact.

Attorney Kinder explained that because the Planning Board found this to be a project of regional concern, notices are required to be sent to the Planning Commission and the affected communities within 14 days of

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the public hearing and the minutes are to be furnished within 144 hours of the decision. The record reflects that the Planning Commission and the Towns did receive notice in the proper time frame. The record also reflects participation by the Planning Commission and perhaps some of the towns during the course of the consolidated proceedings. The question is whether failing to send the minutes to the Planning Commission or the municipalities is such that it should be fatal to the Planning Boards jurisdiction and that is determined by whether the parties who did not get notice can be shown to have been prejudiced by the failure to send the minutes.

During the discussion Member Belletete stated that he feels they were notified. Member Webber stated that he does not see any prejudice. They were notified and did not attend the meeting.

On a motion by Webber, seconded by Belletete, the board denied the appeal to Count XI. (4-0)

Count XII – The Planning Board’s actions are illegal because it granted Van Dyke’s waiver requests in the absence of unnecessary hardship or injustice and violates the Jaffrey’s Land Use Plan.

Attorney Kinder commented that the issue had to do with three waivers about the depiction of natural features, topographical information and soil data in the yield plan. The Planning Board minutes shows that the Board granted the three waivers on two findings. 1) That unnecessary hardship and expense would occur to the applicant since the information would not be helpful to the Board and 2) that granting of the waivers was consistent with the spirit and intent of the regulations since comparable waivers had been granted in the past. Attorney Kinder felt it was worthy of note that the Cheshire County Superior Court previously found in its decision of August 27, 2007 that these waivers were lawfully and reasonably granted..

Member Belletete commented that on August 27, 2007 the Superior Court decided it was lawful and reasonable.

On a motion by Belletete, seconded by DuMont the board denied the appeal to Count XII. (4-0)

Count XIII – The Planning Board failed to establish a baseline yield.

Attorney Kinder stated that is was another issue raised before the Cheshire County Superior Court and its decision of August 27, 2007 and February 14, 2008. The Court found that the C-13 plan that was before the Planning Board contained sufficient detail. Attorney Kinder pointed out that the Planning Board made extensive findings in its decisions.

Member DuMont asked “When Superior Court has already made a decision on this why are we doing it again?” Attorney Kinder explained that although the Courts decision is considered by the board it is the board’s function to determine how the Planning Board dealt with it and whether they dealt with it appropriately. Member DuMont stated that based on what he has seen he would make a motion to deny.

On a motion by Dumont, seconded by Belletete, the board denied the appeal to Count XIII. (4-0)

Count XIV – The proposal violates §5.1 of the LUP

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Attorney Kinder commented that the Planning Board found that the 28 unit development within the developable area met the criteria for the OSDP set forth in Section VII of the LUP. The board also listed nine additional requirements for the proposal to assure that it was in compliance with the LUP.

Member Belletete commented that he feels the Planning Board discussed it quite a bit and he believes the Planning Board did extensive research.

On a motion by Belletete, seconded by Webber the board denied the appeal to Count XIV. (4-0)

Count XV – Lawfulness of the Planning Board decision relying on the ZBA decision.

Attorney Kinder stated that this board obviously feels their decisions were made lawfully. Those decisions have been upheld by the Cheshire County Superior Court in its decision of August 27, 2007 and February 14, 2008. Attorney Kinder asked if the board thought the Planning Board was reasonable in relying on the prior Zoning Board decisions.

Member Webber stated that he does not feel the board made a mistake.

On a motion by Webber, seconded by Belletete, the board denied the appeal to Count XV. (4-0)

Count XVI – The approval is unlawful and unreasonable because of the magnitude in the Mountain Zone.

Attorney Kinder stated that the Zoning Board granted variances to allow this project based upon the variance criteria. The Planning Board had the right to rely on the decision of the Zoning Board. In its decision of August 27, 2007 the Cheshire County Superior Court stated that it could not find that the proposed use, meaning the density – 28 units, would contradict the purpose of the Mountain Zone. The Court held that it could not find the Planning Board decision was unlawful or unreasonable and was deferring to the Planning Board's judgment. The question before the board is do they think the Planning Boards decision was reasonable under the circumstances.

Member Belletete stated that the Zoning Board, the Planning Board and the Courts have all discussed the issue at great length and he holds by the board's approval of past variances and approve the Planning Board approval that the development was lawful and reasonable.

On a motion by Belletete, seconded by DuMont, the voted to deny the appeal to Count XVI.

During the discussion following the motion Member Webber asked Attorney Kinder if it was a special exception versus a variance. Member Webber stated that if it is a special exception he believes they meet all of the criteria. Attorney Kinder discussed it with the board and felt Member Webber was right however there are some variances involved and he urged the board to consider it both as a variance and a special exception in their deliberations.

Member DuMont noted that the appeal is based on 2008 yet the application goes back prior to 2008. There have been changes made to the Mountain Zone in 2008. Attorney Kinder responded that it is based on a Planning Board decision made in October 2008 and although the proposal could be grandfathered from changes that happened after it was in the works he encouraged the board to look at it broadly.

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On a motion by Belletete, seconded by DuMont, the board denied the appeal to Count XVI.
(4-0)

2. ZBA 09-01; Scraggs, Thomas; 109 Forest Park; Map 240/ Lot 59.109; Zone: Rural (with town water)

Administrative Appeal and Special Exception – The applicant proposes a home occupation which is outside of the guidelines used by the Town’s Building Inspector.(Section IV, 4.16, 4.16.1 Zoning Ordinance)

Presentation: Thomas Scraggs

Appearance:

Mr. Scraggs is proposing to perform gun work at his home, specifically with the wood stock. Mr. Scraggs is before the board because his request was denied by the Building Inspector.

Member Belletete asked what type of work would be performed on the stocks. Mr. Scraggs replied that he will be making and repairing them. Member Belletete asked if he would be selling guns in addition to the stocks. Mr. Scraggs replied that it would be the stocks only however the barrels will be brought in so that they can be fitted to the stock. The person who brings the gun in cannot take it out until a background check is done.

Member Belletete asked if this was being done at his residence in Forest Park. Mr. Scraggs replied that it will be done in a spare room at his residence. Member Belletete asked for the size the room. Mr. Scraggs replied that it is 14 x 12.

Member Dumont noted that the application states that cleaning of firearms will also be done. Mr. Scraggs responded “If need be, yes”. Mr. Scraggs added that he would have to pick up the fire arm. Member Dumont asked Mr. Scraggs if he had a means to get rid of the residue. Mr. Scraggs replied that he did.

Chairman Sawyer asked Building Inspector Baron if he had any comment on the application. Inspector Baron stated that he does not believe that gunsmithing is a home occupation and even though all precautions are being taken he does not feel the park, given the density, is an appropriate location. If it was limited to the stocks he wouldn’t have so much opposition. Inspector Baron stated that he has been unable to find any case law on this topic.

Chairman Sawyer acknowledged a “Memorandum of Understanding” between the park and Mr. Scraggs. It appeared that the documents will serve as a contract between the park Association and Mr. Scraggs. Chairman Sawyer made a brief review of the document.

Member Belletete asked Mr. Scraggs if he had any issue with the precautions listed in the document and would he abide by them. Mr. Scraggs stated that he had no issue with the document and he would abide by it.

Member Belletete asked if there would be any ammunition involved with his work. Mr. Scraggs replied that there would be no ammunition at all.

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Mr. Scraggs stated that he will be sighting the guns at his residence using a laser. He will then accompany the customer, off site, for the actual firing of the gun.

Chairman Sawyer asked Mr. Scraggs if he had a Federal Fire Arms License. Mr. Scraggs replied that he did not but an application has been made. Chairman Sawyer asked if the Association knew that he needed that license and that he would have it before he would begin doing work. Mr. Scraggs replied yes.

Jaffrey resident, Janet Grant agrees that the area is very dense and expressed some reservations about approving the request.

The board discussed making a site visit. The majority of the board is familiar with the park however in light of Inspector Baron's reluctance Member Campbell would like to see the property. He will make arrangements with Mr. Scraggs to visit the property. Deliberations were scheduled for Friday, January 9 at 3:15.

There being no further comments, Chairman Sawyer closed the public hearing for this item.

Deliberations:

Member Campbell made his site visit to the property and feels that Mr. Scraggs is going about the process in the right way and certainly the FPTA board has made a lot of conditions which seem appropriate.

Member Webber stated that subsequent to the public hearing he reviewed the application again and does not believe that Mr. Scraggs needs a special exception. The only issue before the board should be the administrative appeal. According to the Zoning Ordinance a special exception is only required for the Mountain Zone.

Addressing the issue of retail sales, the board did not feel the service he would be providing would be considered retail sales.

Public Hearing - Continued Items

3. ZBA 08-19; Pibus, Joan; 79 Town Farm Rd.; Map 247/ Lot 62; Zone: Rural (without town water)

Special Exception – The applicant proposes a dog kennel. (Section IV, 4.3.4 Zoning Ordinance)

Presentation: Joan Pibus

Appearance:

Chairman Sawyer reminded the board that Ms. Pibus had been before them at the December meeting with a proposal but no plan. The board continued the hearing allowing the applicant more time to prepare.

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Ms. Pibus distributed to the board a detailed sketch of the basement where the dogs would be housed, their 2008 statistics and information about The Wynn Dog Rescue. Items in red on the sketch are proposed. Items in black already exist. Ms. Pibus pointed out that the maximum number of dogs at one time has been 10.

Chairman Sawyer asked if the operation needs to be inspected by anyone. An associate of Ms. Pibus stated that someone from the State Vet Office will visit the property to ensure there is a water source, proper ventilation and that it is clean.

Chairman Sawyer asked what the maximum number of dogs would be. After some discussion the number settled on was 15. This number would include the 3 dogs owned by Ms. Pibus.

Inspector Baron asked if the proposed kennel size of 3 x 4 was in line with what the State Vet's office required. Several board members agreed that it was. Inspector Baron pointed out that there are 6 kennels shown on the plan. If there are 12 dogs where will the others go? Ms. Pibus stated that they will have portable crates ranging in size.

Member Campbell asked where the portable crates would be kept. Ms. Pibus replied in the basement. Member Campbell asked how many dogs would there be per crate. Ms. Pibus replied that it will depend on the dog's size. Sometimes they get a litter of puppies which could be kept together in one crate. Member Campbell asked Ms. Pibus if her own dogs were kept in the main part of the house. The reply was yes. Member Campbell asked if she had carbon monoxide detectors in the basement. Ms. Pibus stated that presently she did not but she could.

Inspector Baron asked how the animal waste is handled. Ms. Pibus stated that she bags it and disposes of it at the construction dumpster at the dump. Inspector Baron asked if there was a sign at the dump saying no animal waste. Ms. Pibus replied that it is not allowed where the household waste goes. Ms. Pibus stated that she presently puts lime down to control the flies but has a future plan to install an in ground container for the waste.

Chairman Sawyer announced that deliberations will take place on Friday at 3:15 p.m.

There being no further comments, Chairman Sawyer closed the public hearing for this item.

Deliberations:

Chairman Sawyer asked Ms. Pibus if the drawing submitted showed what was there or what was proposed. Ms. Pibus replied that the areas in red are proposed and the areas in black already exist. She also added that since the public hearing the State visited the property and had only one requirement. 1) Screen doors or windows were needed for ventilation. Although not on the submitted plan, Ms. Pibus did state at the public hearing that she planned to install windows. The State will re-visit the property once the renovations are complete.

Member DuMont informed Ms. Pibus that according to the Health Officer animal waste is not allowed at the landfill. Recording Secretary Lemire stated that Inspector Baron spoke with Rick Forcier of the Dept. of Public Works and according to him animal waste is not permitted.

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DECISIONS

1. ZBA 08-20; Orr & Reno Professional Association (on behalf of The Society F/T Protection of New Hampshire Forests and Jaffrey Residents)

Administrative Appeal – The applicant appeals the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated)

Count XI – Failure to provide adequate notice regarding regional impact.

On a motion by Webber, seconded by Belletete, the board denied Count XI of the appeal to the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated). (4-0)

Count XII – The Planning Board’s actions are illegal because it granted Van Dyke’s waiver requests in the absence of unnecessary hardship or injustice and violates the Jaffrey’s Land Use Plan.

On a motion by Belletete, seconded by DuMont the board denied Count XII of the appeal to the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated). (4-0)

Count XIII – The Planning Board failed to establish a baseline yield.

On a motion by Dumont, seconded by Belletete, the board denied Count XIII of the appeal to the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated). (4-0)

Count XIV – The proposal violates §5.1 of the LUP

On a motion by Belletete, seconded by Webber the board denied Count XIV of the appeal to the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated).. (4-0)

Count XV – Lawfulness of the Planning Board decision relying on the ZBA decision.

On a motion by Webber, seconded by Belletete, the board denied Count XV of the appeal to the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated). (4-0)

Count XVI – The approval is unlawful and unreasonable because of the magnitude in the Mountain Zone.

On a motion by Belletete, seconded by DuMont, the voted to deny Count XVI of the appeal to the October 14, 2008 Jaffrey Planning Board decision in case numbers PB 04-33, PB 06-20, PB 08-14 (consolidated). (4-0)

2. ZBA 09-01; Scraggs, Thomas; 109 Forest Park; Map 240/ Lot 59.109; Zone: Rural (with town water)

Administrative Appeal and Special Exception – The applicant proposes a home occupation which is outside of the guidelines used by the Town’s Building Inspector.(Section IV, 4.16.Zoning Ordinance)

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On a motion by Campbell, seconded by Webber, the request for a home occupation, specifically gun stock repair, make new gun stocks, clean firearms and install gun mounts by laser was approved subject to the following conditions. (5-0)

Conditions:

1. Obtain a FTA firearms license
2. Adheres to the FPTA guidelines
3. Review by Jaffrey Police

3. ZBA 08-19; Pibus, Joan; 79 Town Farm Rd.; Map 247/ Lot 62; Zone: Rural (without town water)

Special Exception – The applicant proposes a dog kennel.(Section IV, 4.3.4 Zoning Ordinance)

On a motion by Webber, seconded by DuMont the request to operate a dog kennel was approved subject to the following conditions. (5-0)

Conditions:

1. All animal waste is to be legally and properly disposed off.
2. Number of dogs on the property at any one time will not exceed fifteen (15).

OTHER BUSINESS

None

ADJOURNMENT

The meeting recessed at 9:03 p.m., reconvened on Friday, January 9, 2009 at 3:15 p.m., and adjourned at 4:00 p.m.

Submitted:

Attest:

Erlene R. Lemire
Recording Secretary

Lee A. Sawyer
Chairman,
Jaffrey Zoning Board of Adjustment

Decisions of the Zoning Board of Adjustment are subject to a 30-day appeal period for rehearing.