



MEETING MINUTES

NORTH HAMPTON PLANNING BOARD Regular Meeting Monday, February 5, 2007 Mary Herbert Conference Room

These minutes were prepared as a reasonable summary of the essential content of this meeting, not as a transcription.

Members present: Phil Wilson, Chairman; Shep Kroner, Vice Chairman, Craig Salomon, Joseph Arena, Vince Vettraino and Laurel Pohl arrived at 6:45pm.

Absent: Henry Marsh, Selectman's Representative.

Others present: Jill Robinson, Circuit Rider/RPC and Wendy Chase, Recording Secretary.

Alternates present: None

Mr. Wilson convened the meeting at 6:33pm.

Mr. Wilson noted for the record that there was a quorum.

I. Old Business

07:01 – James and Karen Confalone, 41 Causeway Road, Rye, NH 03870.

Subdivision Application. The applicant proposes to create three (3) lots using land affected by Municipal Boundaries per RSA 674:53. Property location: Ocean Boulevard, North Hampton, zoning district R-2, M/L 005-012, 005-013 & 005-014. This application is a continuation from the January 2, 2007 meeting.

In attendance for this application:

Attorney Timothy Phoenix

James Verra, Licensed Surveyor

Since the property lies within the Little Boar's Head Village District, the applicant must apply to the Little Boar's Head Village District Planning Board. Mr. Wilson asked the applicants whether or not they had met with the Little Boar's Head Planning Board. Attorney Phoenix explained that they did meet with the Little Boar's Head Planning Board last week and the Board took jurisdiction of their application and gave the applicants a list of items to address before going back before them for approval.

Mr. Wilson explained that since the Little Boar's Head Planning Board did not render a decision, the application is considered incomplete, and the North Hampton Planning Board would not be in a position to take jurisdiction of the application. He asked if the applicant wished to request a continuation.

Attorney Phoenix asked if he would be able to continue and use the time as an informational meeting to get feedback from the members on possible issues or concerns they may have with the proposed plan. The Board determined that it would be a waste of time, and it was explained to Attorney Phoenix that it is the Board's long standing practice that any application involved with Little Boar's Head district would have to meet with the Little Boar's Head Planning Board and a decision would have to be rendered by them prior to meeting with this Planning Board.

Attorney Phoenix was not fully informed of this practice and requested a continuance to the March 5, 2007 Planning Board meeting.

Dr. Arena moved and Mr. Vettraino seconded the motion to grant a continuance for case #07:01, James & Karen Confalone to the March 5, 2007 meeting. The vote was unanimous in favor of the motion (6-0).

Mr. Salomon added that the applicant would have to put the request for a continuance in writing and forward it to Ms. Chase for the permanent record.

II. New Business

07:02 – Bluefish Granite, LLC, 121 Lafayette Road #9, North Hampton, NH.

Conditional Use Permit Application. The applicant proposes to enlarge their existing sign to 12-square-feet. Property Owner: Lucas Holding Co., LLC 53 Perkins Road, Rye, NH 03870. Property location: 121 Lafayette Road, zoning district I-B/R, M/L 013-074-001.

In attendance for this application:

Jeffrey Foreman, co-owner of Bluefish Granite

Mr. Foreman presented a sketch of his proposed sign to the Board for review. He explained that the current sign is too small and has applied for a larger sign including the business address in hopes to attract more business. After a lengthy discussion, Mr. Wilson stated that given the current sign ordinance the Board could not act on this application. He suggested that Mr. Foreman and the Business Park owner come back before the Board with a new sign application that would better address the inadequacy of the current sign while meeting the requirements of the sign ordinance.

Dr. Arena moved and Ms. Pohl seconded the motion to deny the Conditional Use Permit Application, case 07:02 because it does not meet requirements of the present sign ordinance and that there is a material change to the existing sign, therefore the sign needs to comply with the current standard.

Dr. Arena suggested to Mr. Foreman that he inform his landlord of the discussions that took place at this meeting and reminded him that part of the rent that he pays goes towards the lease of the multi-tenant sign.

The Board agreed that a decent sign is needed and that the present sign lacks important information such as the address of the businesses to better assist Police and Fire in an emergency.

Mr. Wilson opened the public hearing at 7:17pm.

Mr. Wilson closed the public hearing at 7:17pm without public comment.

The motion passed (5 yes, 0 opposed and 1 abstention). Mr. Salomon abstained.

Mr. Salomon explained that he abstained because he felt that the applicant was not the proper party to go before the Board and that the inadequacies of the sign are really issues for the property owner to address. Mr. Salomon further commented that part of the discussion regarding this application was whether or not it would be in the public's interest, which is not a standard in the sign ordinance but would be a standard if the Zoning Board of Adjustment were dealing with it as a variance issue.

Mr. Wilson responded that "the public interest" is a general consideration that applies to all deliberations by the Board in dealing with Conditional Use Permit applications, Site Plan Reviews or Subdivision Plan Reviews and that, therefore, "the public interest" is a legitimate standard to be applied by the Planning Board.

The Board concurred that the actual owner of a property and sign would need to apply for a Conditional Use Permit application for a new sign rather than a tenant of that property.

III. Other Business

Mr. Wilson asked if anyone objected to going out of order on the agenda topics under "Other Business". There was no objection.

1. Discussion on whether to reconsider approval of the Conditional Use Permit that was granted at the January 2, 2007 Planning Board meeting for Staples's two 80-square-foot wall signs.

Attorney Pelech was present to represent the property owners of W/S North Hampton Properties, LLC.

Mr. Wilson explained that at the January 15, 2007 Work Session the Board voted to take up the question of whether to reconsider approval of the Conditional Use Permit granted to W/S North Hampton Properties, LLC for two eighty-square-foot wall signs with four feet-high letters to be externally lit for the proposed Staples office supply store. Mr. Wilson was also authorized by the Board to seek legal counsel on what procedures the Board should follow with respect to reconsideration and whether or not a reconsideration of a Conditional Use Permit was even possible.

Mr. Wilson further stated that he consulted with Jill Robinson, the Local Government Center and legal counsel (Attorney Bernard Campbell referred to the Town by Attorney Robert Ciandella) regarding this issue.

Mr. Wilson explained that the gist of Attorney Campbell's advice to the Board was that the Board really doesn't have much ground to stand on in order to reconsider and revoke the Conditional Use Permit application. He read the following from Attorney Campbell's response:

- Under RSA 677:1, the appeal process is limited to that set forth in the statute.
- That under RSA 677:15, appeals must be filed in thirty (30) days, which did not occur in this case.
- Because the Planning Board is a quasi-judicial body whose rulings determine the rights of parties, such rights become effective on the vote, subject only to divestment by a statutory appeal.
- That the Planning Board should view its authority to "reconsider" limited to those circumstances, which the legislature has used for revoking a recorded plan (by analogy if not in literal context).
- Absent some type of "fraud" or clear misrepresentation, the Board is not free to "change its mind" or "re-visit" a discretionary decision once rendered.
- The minutes of the January 16th Planning Session (admittedly sparse) do not appear to support an action by the Board to vacate the prior Board decision of approval.

Mr. Wilson explained to Attorney Pelech that after receiving new information at their January 16, 2007 Work Session, the Board voted to take up the question whether to reconsider the approval of the Conditional Use Permit application for Staples proposed signs. Dr. Arena added that the Board has received some comments from the townspeople, many fearing that the signs would be too large.

Mr. Wilson requested on behalf of the Board that Attorney Pelech ask the owners of the property, W/S North Hampton Properties, LLC, to consider reducing the signs from two eighty-square-foot signs with four-foot high letters down to two forty-five-square-foot signs with three-foot high letters.

Attorney Pelech stated that his clients made a presentation to the Board; it was voted on and approved unanimously by the Board, which resulted in his clients entering into an agreement with Staples who then ordered the approved eighty-square-foot signs.

Dr. Arena moved and Ms. Pohl seconded the motion to request that Attorney Pelech convey to Staples that the Planning Board requests they consider reducing the size of the two approved wall signs to forty-five-square-feet with three-feet high letters. The motion passed (5 yes, 1 opposed and 0 abstentions). Mr. Salomon voted against.

Attorney Pelech agreed to convey the Board's request that the applicant consider reducing the size of the Staples signs and will inform the Board of his client's decision.

2. Public Hearing on a proposed amendment to Section X.F.3 Architectural Standards of North Hampton's Site Plan Regulations for Wireless Communications Facilities ["WCFs"].

In attendance for the public hearing:

Attorney Peter Loughlin

David Maxson, Broadcast Signal Lab, LLP

Denis Kokernak, Ship Rock

Attorney Daniel Klasnick

Mr. Wilson drafted an amendment to the architectural standards in the site plan regulations for WCFs and explained that it was discussed at the January 16, 2007 Work Session and it was voted on by the Board to hold a public hearing for possible adoption of the proposed amendment.

Mr. Kroner said that last year's efforts to improve the wireless communications ordinance were primarily designed to address the aesthetic concerns of wireless communications facilities and in that process the Board came up with an overlay district which may have not worked in the best interest of the townspeople. Mr. Kroner opined that taking an architectural standard approach within the site plan review regulations would address the aesthetic concerns and the Board should seriously consider adopting the proposed amendment.

Dr. Arena said that he believes that by approving the Distributed Antenna System (DAS) in November 2005, that any other party that tried to do anything other than a DAS would not have entrance into this Town and feels it is unnecessary to add the proposed amendment to the site plan regulations. Dr. Arena also acknowledged the hard work and many hours Mr. Wilson put into the proposed amendment.

Mr. Salomon agrees with the approach to amend the site plan regulations because it makes it fairer for all involved.

Ms. Pohl said that she thinks it accomplishes what the Board was trying to do last year regarding amendments to the wireless ordinance.

Ms. Robinson asked that if the site plan amendment were adopted, how would it interact with the existing wireless ordinance?

Mr. Wilson explained that he tried to make the amendment compatible with the existing wireless ordinance. He said that the proposed amendment to the ordinance that was abandoned in mid-2006 focused on how to evolve the concept of a zoning ordinance with overlay districts to do what the Board wanted to do and feels that this amendment to the Site Plan Review Regulations accomplishes what the Board set out to do which is to have (1) seamless coverage, (2) unobtrusive facilities and (3) to be technologically agnostic.

Mr. Wilson opened the public hearing at 7:50pm.

Attorney Daniel Klasnick of Verizon Wireless asked that if an application were submitted to the Board for a cell tower and it met the current ordinance would the applicant have to first prove that the DAS would not work at that proposed location?

Mr. Wilson explained that with the proposed amendments to the architectural standards the applicant would have to prove all three of the following:

a. *Essentially invisible designs:*

First, essentially invisible designs shall be used unless deemed technologically impossible or unreasonable in the sole discretion of the Planning Board.

"Essentially invisible designs" for a WCF's Antennas and Antenna support structures include, but are not limited to: (1) co-location on Existing Towers, co-location on or use of Existing Antennas where technically possible, or co-location on Existing Alternative Antenna Structures, (2) installation of essentially invisible antennas, such as "whip" antennas or "canister-style" antennas, on Existing Utility Poles or Equivalents or on existing structures of other kinds, such as water towers, belfries, or steeples, or (3) installation of Antennas completely within an Existing structure, such as a steeple, belfry, or chimney.

b. *Visible but effectively disguised or camouflaged designs:*

Second, if and only if the Planning Board in its sole discretion finds that the applicant has demonstrated that essentially invisible designs are not technologically possible or not reasonable, then ***visible but effectively disguised or camouflaged designs*** shall be used.

Visible but effectively disguised or camouflaged designs for a WCF's Antennas and Antenna support structures include, but are not limited to: (1) new Alternative Antenna Structures that are fully compatible with their environs, such as a silo, enclosing a WCF, that is adjacent to an existing barn and of a size appropriate to the barn or (2) a faux-tree monopole tower where a tree of its appearance and Overall Height are, in the sole discretion of the Planning Board, found to be compatible with the environs.

c. *Visible undisguised or non-camouflaged designs:*

Third, if and only if the Planning Board in its sole discretion finds that the applicant has demonstrated that both essentially invisible designs and visible but effectively disguised or camouflaged designs are not technologically possible or not reasonable, then ***visible undisguised or non-camouflaged designs*** may be used.

Visible undisguised or non-camouflaged designs with respect to a WCF's Antennas and Antenna support structures in order of preference include, but are not limited to: (1) new Alternative Antenna Structures that may be less than fully compatible with their environs, such as a wildlife observation tower or fire tower in an area where one would not normally be sited, (2) a faux-tree monopole tower where a tree of its appearance and Overall Height are not fully compatible with the environs, (3) a monopole tower, or (4) any another type of tower, such as a lattice tower.

Mr. Maxson opined that the amendment to the site plan regulations was a great idea and offered suggestions on some of the language to it. He also explained that willing customers are needed to implement DAS.

Mr. Kokernak said that one of the obstacles to implementing DAS is that carriers are not sure that the Town of North Hampton is ready commit to DAS and that the proposed amendment to the site plan regulations sends a message that the Town is indeed serious about it.

Mr. Wilson closed the public hearing at 8:44pm.

Dr. Arena commented that the Board would be able to achieve what Mr. Wilson did with the amendment but in a simpler manner.

Mr. Vettraino stated that the goals of the Board are to have invisible seamless coverage and thinks that the amendment is well written.

Mr. Salomon said that the document written by Mr. Wilson achieves the goals of the Board.

Dr. Arena said that it was an excellent treatise but reiterated that since the DAS was approved it should take care of any future cell tower applications and that the proposed amendment could create a mess for the Town by micro defining the issue.

Mr. Kroner stated that the current wireless ordinance doesn't give the Town the legal protection it needs for invisible seamless coverage.

Ms. Pohl said that once commitment is shown by adopting the amendment, the Board can work with the ordinance and weed out the problems that come with it and as being part of the site regulations the Board has the ability to waive any of the issues that may cause problems.

Ms. Robinson said she supports the amendment and feels the length is not a problem because words can have multiple meanings so unless they are defined it can lead to various interpretations.

Mr. Wilson said his opinion differs from Dr. Arena and believes that if an applicant wants to build a cell tower in the I-B/R district and is granted a variance by the ZBA the Planning Board would only be able to control the appearance of the site by landscape buffers and screening around the base.

Mr. Salomon moved and Ms. Pohl seconded the motion that amendments to Section X.F.3 of the Architectural Standards of the Site Plan Review Regulations, the January 22, 2007 version, be adopted as presented.

The vote was unanimous in favor of the motion (6-0).

The Board recessed at 8:50pm.

The Board reconvened at 9:00pm.

3. Correspondence from John Chagnon of Ambit Engineering regarding updated phasing plan, Greystone Village Engineering.

Present for this discussion:

John Chagnon, Ambit Engineering

Joe Cataldo, GFI Partners

Mr. Chagnon went over a colored revised plan of the Greystone Village project, which would increase the current three-phase plan into four phases. The largest detention pond that was originally a part of phase one would now be part of phase four. He explained that he had submitted a new drainage report and sent a copy to Altus Engineering and NH DES.

Mr. Salomon voiced concerns of mosquito breeding and questioned whether or not the detention ponds would drain quickly enough. Mr. Chagnon said it depended on the time of year and Mr. Cataldo said that currently there is no standing water for any length of time.

Mr. Wilson said that he doesn't see anything wrong with the proposed phasing but the Board would need to see the Town Engineer's report.

Mr. Chagnon requested that Board give them direction on the bonding because the Town's Engineer has requested they revise the bond estimate because it had been awhile since it was first figured.

Mr. Wilson explained that a separate surety would need to be set up for the large detention pond slated to be constructed in phase four.

Mr. Salomon said that he would like the Board to review the bonding on projects phased like this one on an annual basis. Mr. Wilson agreed.

Mr. Cataldo said that he would review the current bonding to prove that there is enough money remaining for the completion of phase two and the large detention pond in phase four. He said that he would contact Ms. Chase to be placed on an agenda when they are ready.

4. Rockingham Planning Commission – Circuit Rider contract for review and/or approval.

Mr. Wilson noticed a mistake in the number of meetings stated in the contract. Ms. Robinson will send over a revised contract for Mr. Wilson to sign.

Dr. Arena moved and Ms. Pohl seconded the motion to grant Chairman Wilson permission to sign the amended Rockingham Planning Commission Circuit Rider contract with an expiration date of June 30, 2007.

The vote was unanimous in favor of the motion (6-0).

Ms. Robinson informed the Board that the CZP grant application deadline is Monday, February 12, 2007 and if the Board would like to submit any special projects with the application RPC would be happy to do so. Ms. Robinson reminded the Board that it is a matching funds grant and the Town would have to match the amount of funds requested.

Mr. Wilson suggested that Ms. Robinson put in for \$2,500.00 for the Master Plan and Zoning and Site Plan regulation revisions and that there is money in the Planning Board's budget to cover the match.

Mr. Wilson asked whether Mr. Kroner were willing to serve another term as RPC representative. Mr. Kroner said the he was willing.

Dr. Arena moved and Ms. Pohl seconded the motion to nominate Mr. R. Shep Kroner for reappointment to the Rockingham Planning Commission.
The vote passed (5 yes, 0 no and 1 abstention). Mr. Salomon abstained.

Ms. Chase was directed to send a memo to the Board of Selectmen informing them of the Board's vote to recommend the reappointment if Mr. Kroner.

Ms. Chase explained that she informed Attorney Phoenix, representative to the Confalones, that he would need to go before the Little Boar's Head Village District prior to meeting with this Board, but neglected to tell him that a decision by LBH Planning Board would have to be made also. She asked if there was anything in the Town's regulations pertaining to this requirement.

It was determined that there is no such regulation but that it has been a long-standing practice of the Board. Ms. Chase was directed to add the topic for discussion at the next Work Session.

**A motion was made and seconded to adjourn the meeting at 9:50pm.
The vote was unanimous in favor of the motion. (6-0)**

Respectfully submitted,

Wendy V. Chase
Recording Secretary