

ATKINSON PLANNING BOARD
Atkinson, New Hampshire

Workshop Meeting
Wednesday, April 16, 2003

Present: Susan Killam, Chairman; Michael Fletcher; Chuck Earley;
Alternates: Donna Sullivan
Ex-Officio: Phil Consentino, Selectman (8:15)

Ms. Killam called the meeting to order at 7:55 P.M.

CORRESPONDENCE

Incoming

1. Rockingham Economic Development Corp. dated 3/18/03 re: Comprehensive Economic Development Strategy Priority Project List for 2003.
2. Selectmen minutes dated 3/17/03 and 3/24/03.
3. Town of Atkinson Prime Wetland Study Final Booklet dated 2/27/03.
4. Town of Derry Public Notice for meeting of 4/16/03.
5. City of Haverhill Public Notice for meeting of 4/29/03.
6. Keach-Nordstrom Associates Statement of Balance on Account for Johnston Lot Line Adjustment and Atkinson Country Club, Cart Storage Building.
7. MacMillan Law Offices dated 4/11/03 re: Cogswell Farm Subdivision Document updates.

Outgoing

1. Attorney Kalman dated 4/4/03 re: Cogswell Farm document review.

Ms. Killam reported that she sent the Homeowner's Association Documents and the Conservation Easement to Attorney Kalman for his review.

Discussion –

1. Jeff Haskell – Re: Pool Landscaping Plan for 17 Main Street, Map 5, Lot 7

Mr. Haskell is before the Board to discuss his intent to landscape his pool in order to provide screening from his neighbor as a condition of approval. A drawing of the proposed landscaping was presented. Ms. Killam did not feel the trees proposed would provide the screening needed. Mr. Earley was under the impression that the neighbor preferred a fence. Ms. Killam noted that public hearings are held for this purpose and that would be the time for abutters to offer an opinion. Ms. Killam suggested a blue spruce, which would retain its branches to the ground and would be a visual barrier. Mr. Earley wanted the screening

done correctly and agreed with the blue spruce. Ms. Sullivan reminded Mr. Haskell that the tree he proposed drops its leaves and could create additional problems with leaves falling into the neighbor's yard. Mr. Haskell asked why a 4' fence would not suffice and Ms. Killam stated that this could not be solved at this discussion and would have to go to a public hearing.

After discussion the Board suggested a 6-foot stockade fence or a blue spruce. Mr. Haskell agreed with the 6-foot stockade fence.

The discussion was closed at 8:14 P.M.
The next discussion was opened at 8:15 P.M.

3. Cogswell Farm Compliance of Plan Approval of May 19, 2000.

Ms. Killam reported that Attorney McMillan has provided the Homeowner's Association Documents and the Conservation Easement. Ms. Killam can now attempt to get signatures of all whom own a share of the dedicated open space. In response to a concern expressed by Mr. Fletcher, Ms. Killam referred to the change of ownership from Lemery Builders to Lemery Development, LLC, and noted that this is not the concern of the Planning Board. Ms. Killam provided Chief Consentino some background history on this plan to bring him up to date. Also discussed was how the property is taxed.

Bob Robertson, President of the Condominium Association questioned the deed from Lemery Builders to Lemery Development, LLC to transfer all remaining interests in the subdivision. When Mr. Lemery received his permits for the subdivision there were certain amenities that had to be completed such as the road when Phase 1 was completed, an irrigation sprinkler system and a parking area for storage of RV's and boats. He asked if Lemery Builders or Lemery Development, LLC would be responsible for the completion of these amenities and do they have permits to complete Phase 1 and 2. Ms. Killam stated that anyone who owns the property could pull permits. The infrastructure and the niceties are not bonded by the town because it is privately owned land and will never be public. If the residents do not see any action on these items Ms. Killam suggested they go forward legally. Mr. Robertson asked, if they are not meeting their obligations, is there an opportunity to prevent new permits to be issued until a plan is established to meet these obligations. Ms. Killam stated that the only thing the town can hold a bond on is erosion control issues. The other issues were guaranteed in a public offering statement filed at the Attorney Generals office, the Consumer Protection Division under the condominium act. If a formal complaint is made everyone involved should be listed.

Ms. Killam suggested that Mr. Robertson contact Attorney Jutras regarding this.

The discussion was closed at 8:36 P.M.
The next discussion was opened at 8:37 P.M.

**2. Paul Wainwright & Scott Kukshel – Conservation Commission re:
Wetland Amendment procedure.**

Conservation Commission members were present to discuss the Wetland Amendment procedure. At a recent hearing the Board asked to see a more complete package than the one presented regarding the proposed designated wetlands amendment. Mr. Kukshel noted that there were loopholes in the ordinance resulting in residents looking for variances from the wetlands. Ms. Killam asked if the Conservation Commission backs the applicant when reviewing these variance requests and Mr. Kukshel stated that every case is different and is looked at in regard to the significant level of the wetland. The Zoning Board of Adjustment deals with the hardship aspect. This change would allow for some 'weighing' of the value of the wetlands in the proposed amendment. In response to a question, Mr. Kukshel stated that there have been more times when the commission has recommended a denial and the Zoning Board has approved it. It is very rare when the commission has approved a request and the Zoning Board has denied it. He did feel that the Zoning Board has been stricter with these applicants in the past few years.

Mr. Kukshel noted that you can't build a house within 100' of a wetland but you can put a road right next to a wetland. A road contributes to more pollutants than a house would. An amendment was tried in 1995 that was defeated at the polls.

The Conservation Commission would like to work with the Planning Board to hold more Public Hearings and to get some information out to the public. They would like to invite speakers in for a public information evening. Ms. Killam noted that the summer months would not be a good time and the first Workshop Meeting in September was suggested. The question of how this would be publicized was discussed. One of the proposals the Conservation Commission had was to put out a newsletter with basic information by the end of August or the beginning of September and start meeting in the fall. Mr. Earley suggested using the cable channel to advertise. Sandra Crystal from the state was mentioned as a possible guest speaker. Ms. Killam suggested field trips to visit these wetlands.

The Planning Board was asked what there participation in this would be. Mr. Earley stated that he would like to see the commission get started with this on there own with the Planning Board available to help when needed. Public Information meetings will be scheduled.

**The discussion was closed at 9:00 P.M.
The next discussion was opened at 9:01 P.M.**

Other Business

Brian Boyle, Jim Kirsch and Bob Jones re: Sites on Industrial Way

At a recent Selectmen's Meeting some sites on Industrial Way were discussed and notice of violation letters were sent. Mike Pivero from Eastern Seaboard on Industrial way received one of these letters and was present for this discussion.

Mr. Boyle reported that the Code Enforcement Officer reported a violation on Industrial Way regarding a building that is under construction. There is an approved site plan from April 1998 and it was the opinion of the Selectmen that, until the building is completed, all work should be stopped at the site. Mr. Boyle was aware that this is a Commercial Zone and that there will be accessory uses involved. He felt that the conditions of the site plan should be completed first and the plan signed off by the town engineer or building inspector before the site can be used. The site is being used at this time. There is an approval letter signed by Mr. Morse with eight conditions and these were read. The business is operating and equipment is being stored there. The minutes were also reviewed. Mr. Boyle stated that an applicant may have two years to complete a building but was not sure what the building time has to do with the use of the site. He questioned safety and health issues.

Mr. Earley and Mr. Fletcher were on the Board when this plan was approved. Ms. Killam recalled that Eastern Seaboard Construction would be storing equipment on this site. The question was never raised whether this would happen before, during or after the building was completed. Mr. Fletcher recalled that there was discussion and concern about the noise level and driving equipment early in the morning. It was understood that the land would be used prior to the building being constructed. Mr. Fletcher did not recall a time limit on the construction. Mr. Boyle asked if it got omitted from the approval process and Mr. Fletcher did not think there was a concern because an application would have to be filed for a permit and that would be the Building Department's concern.

Mr. Earley also remembered the noise problem and an issue with the fence. Mr. Earley noted that it has been many years and the Board never thought it would take this long. He noted that the permit has been renewed and the Board felt encouraged that this would be completed.

Mr. Pivero stated that he has come a long way. Last year at this time he was invited in by the Planning Board and asked when he would start the building. He added that, from the very beginning, anything he has told the Board he has tried to live up to. The outside structure is approximately 95% complete. Mr. Pivero reported that he did have a problem with underground wires. He thought that the building could be complete by this summer. In the last twelve months a substantial portion of the building has been completed. He added that he is present at the site a small percentage of the time and noted that there has never

been a complaint by any of the neighbors. When the project was started he told the Planning Board that what he stores is messy and during the construction phase a fence will be installed for screening. The final site plan had a fence that runs beside it in both directions. In the rear is a gravel parking lot where equipment will be stored. He stated that he has never changed the use or intent of use on the property. He noted that the plan does have this project phased.

Mr. Boyle stated that it is not his intent to restrict anyone from using their property. He stated that he goes by the book and does not understand whether or not there is anything that states you can use this property before the building is completed nor is there anything in it that says you can't. It also does not give a time limit to complete the building. Mr. Jones referred to BOCA, which states that once you receive a permit and you do not start in six months the permit can be voided. You must have one inspection at least every six months to keep the permit opened. Mr. Boyle asked if this had been accomplished.

Ms. Killam felt that we do not have the opportunity to restrict what a person does with his property. Mr. Boyle did not agree. Mr. Boyle stated that there is an open site, a building under construction, a construction company coming in and out of there and there has been no sign off by Department Heads. At the very least the town should ask for a 'hold harmless' agreement.

Ms. Killam stated that the Planning Board does not issue building permits or oversee them. This is a final approval and the plan was signed because the conditions were met and the plan recorded. Mr. Boyle noted that he could take ten years to complete a building as long as he renews his permits every six months. Mr. Earley noted that once he has his occupancy permit everything he is doing now would be legitimate. Ms. Killam stated that until he gets his Certificate of Occupancy he couldn't go into that building even when it's raining. The detail of the site plan deals with erosion control, grading, fencing. Ms. Killam asked what would happen if he never asked to put up a building. He can still store his equipment on the lot and he must adhere to the conditions of the site plan.

Mr. Boyle felt that there should be something in the regulations that will control a business like this. Mr. Pivero assured the board that he has every intention to complete the building and did not feel he was doing anything wrong. Mr. Boyle wanted to know if he could continue this way for the next ten years. Mr. Earley stated he must renew his permit every six months. Mr. Pivero agreed that he would not work in the building until he has an Occupancy Permit. Mr. Kirsch stated that the building is ready for framing at this time.

Ms. Killam asked Mr. Jones if he contacted Mr Pivero because he had a permit out for a while with no activity noted. Mr. Jones stated that Mr. Kirsch does this on a regular basis. Mr. Kirsch stated that he had inspected the building and it was his opinion that the building was being occupied without a permit. This

violation was brought to the Selectmen. Mr. Pivero has not asked for an electrical inspection at this time.

Mr. Pivero addressed Mr. Kirsch and stated that if he had called him before issuing a violation this would not have gone this far. Mr. Kirsch stated that he was looking for direction after observing that the work on these buildings had stopped.

A frame inspection will be done next week. Mr. Pivero will have six months to the next inspection and he can continue to work on the building with the existing permit. If he will not be ready for a framing inspection for three or four months the permit will be voided and he will have to start over. Mr. Pivero stated that he is ready for a framing inspection.

A motion was made by Mr. Earley to adjourn. Ms. Sullivan seconded the motion. Motion approved unanimously.

The meeting was closed at 10:00 P.M.
Next scheduled Planning Board Workshop meeting May 7, 2003.

APPROVED _____ Respectfully submitted,

Carol Kater