

**.0ATKINSON PLANNING BOARD
Atkinson, New Hampshire
Public Hearing Meeting
Wednesday November 18, 2009**

Present: Sue Killam, Chairman

Regular Members: Joseph Guischard; Tim Dziechowski, Mike Fletcher

Alternate: John Wolters; Selectman Ex-Officio: William Bennett

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

Correspondence:

Incoming

1. Request for project review by the NH Division of Historical Resources, Island Pond Road dated 11/3/09
2. RPC: Workforce Housing Forum
3. Attorney Sumner Kalman dated 11/9/09 Re: 09-E-0233 PJ Murphy Transportation v. Town of Atkinson; 09-E-0125 Keith Wolters, et al v. Town of Atkinson
4. Town Administrator dated 11/17/09 re: Contact Numbers/Annual Report
5. Jonathan Longchamp dated 11/18/09 re: Site Plan Review Map 13 Lot 15

Outgoing

Approval of Minutes:

Chairman Killam requested that approval of minutes of the October 7, 2009, October 21, 2009 and November 4, 2009 meetings of the Planning Board be deferred until a later time.

Public Hearings – Continued from October 21, 2009

1. Gilles Gagnon continued review of a proposed Commercial Site Plan of a 3,500 sq. ft. addition to existing building at 12 Industrial Way, Map 16, Lot 50 CI Zone. Extended to 11/18/2009.

Mr. J. Lavelle of Lavelle Associates, representing the applicant, requested the Planning Board allow the applicant to withdraw the application without prejudice as the applicant did not need or want an addition at this time.

Chairman Killam requested a motion to grant the applicant's request to withdraw. Member M. Fletcher made a Motion to Grant the Applicant's request to withdraw without prejudice. Mr. Joseph Guischard seconded the motion. Mr. John Wolters stepped off. Chairman Killam, Member J. Guischard, Member M. Fletcher, and Member T. Dziechowski all voted in favor of granting the applicant's request to withdraw without prejudice.

2. MJK Realty, LLC continued review of an application of a proposed site plan for an office building on property located at 121 Main Street, Map 13, Lot 15 TC Zone. Taken under jurisdiction 9/16/09.

Mr. J. Lavelle of Lavelle Associates, again representing the applicant, passed out revised plans with comments from Stantec Engineering and abutter taken into consideration. Mr. Lavelle stated that as requested, the zone line and been added; and a 100 foot buffer line had been added. The changes in the plans could be seen on Sheet 3. He stated that the dumpster on previous plans had been moved to behind the building.

Mr. Lavelle stated that he had addressed the issue of landscaping, as well. At the previous meeting the Board had informed him that the landscaping in front of the building on Main Street was sufficient but along with an abutter had requested that trees be added in the area of the property line along Pages Lane. Vegetation had been added on the new plans.

Mr. Wolters asked Mr. Lavelle about the dumpsters, stating that at the last review of the plans, he had requested that Mr. Lavelle put in two dumpsters, one for trash and the other for recycling. Mr. Lavelle responded that the new plans only showed one dumpster but there was room for two.

The Board then discussed how much and what type of vegetation should be required in the buffer zone between the lot and Pages Lane. Chairman Killam remarked that the new landscaping consisting of salt tolerant Austrian Pine. Mr. Lavelle stated that the red oak was salt tolerant, too and he picked something that would fit in with the vegetation that was already between the building and Pages Lane.

Ms. Julie LaBranche, Rockingham Planning Commission asked Mr. Lavelle what type of vegetation was in that area at present. Mr. Lavelle responded that there were hardwood saplings, scrubby woods. Ms. LaBranche read from the RSA's and informed Mr. Lavelle that the buffer needed to be at least 15 feet in width, and the vegetation needed to be at least 3 feet when planted and 5 feet in 3 years. Chairman Killam inquired if the applicant was planning on ripping out the existing vegetation. Mr. Lavelle responded no. Ms. Killam stated that there were large oak trees there now. Ms. LaBranche stated that buffering was required to be from zero to five feet and that there were lots of skinny saplings and big trunks and that there would be no buffer in the winter.

Ms. Killam stated that another issue was that the buffer was between zones. Mr. Lavelle stated that he was asking the Board for its opinion and that he would do whatever the Board thought would be best. Ms. Killam stated that there was only one house that could see the lot. The abutter stated that he could not see it. Ms. LaBranche suggested that Mr. Labelle provide photos. Mr. Lavelle stated that it was thick in the back and he would be happy to plant more pines. Mr. Bennett pointed out that the lot lines between lot 20 and lot 19 were closer then Mr. Lavelle had stated. Ms. Killam stated that the driveway was close but the house was farther away.

Chairman Killam suggested that a site walk be organized or Board members could visit the site individually. Mr. Lavelle agreed. Mr. Dziechowski suggested that the site walk could be a meeting. Chairman Killam asked if it could be on a weekend. Mr. Dziechowski stated that he was available any day. Mr. Wolters stated that he would be available at 7:00 a.m. on Saturday. Dr. Guischar and Selectman Bennett stated that they would drive by. Mr. Lavelle stated that Sunday was a good day for him and asked what time the Board members would be available. Mr.

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Bennett stated that he would be available at 1:00 p.m. on Sunday. Mr. Lavelle stated that he could be there Saturday, too. Mr. Dziechowski stated that he would be brush hogging conservation fields and would drive by. Ms. Killam stated that she would be available at 1:00 p.m. on Sunday. Mr. Lavelle stated that he was available to meet several times. Ms. Killam stated that she would meet with Mr. Lavelle at 1:00 p.m. on Sunday. Selectman Bennett said Sunday at 1:00 p.m. worked for him. Mr. Wolters stated that it depended on the weather and he would look at his calendar. Mr. Lavelle stated that he would park his truck at the lot so the Planning Board members could see it and handed out information on parking.

Chairman Killam asked if there were on site water and if the applicant was going to use a well. Mr. Lavelle stated that he was planning on tying into municipal water and that the building was located ten feet from the water line. Chairman Killam asked if the Atkinson Water Company was aware of that. Mr. Lavelle stated yes and that the proposed tie-in could be seen on the plan, that the water main was installed while he was drawing the plans.

Chairman Killam asked if everyone on the Board was comfortable with the fact that while the detention basin structure was not within the 100 foot buffer for wetlands, the graveling is. No one objected. Mr. Bennett asked how much grading would be in the buffer zone. Mr. Lavelle responded that it would be just at the end of the driveway. Ms. Killam asked if it were only four feet deep and Mr. Lavelle affirmed. Mr. Lavelle stated that a berm approximately two to four feet high was created that becomes lawn and one side will end up growing in. Mr. Bennett asked if there would be problems with mosquitoes. Mr. Lavelle responded that the buffer would not hold water. Ms. Killam stated that it was not designed to hold water, just hold back and treat. Mr. Lavelle stated that it would be dry unless there was a storm event, which is why there is a berm.

The next issue the Board discussed was parking. Mr. Lavelle stated that the parking schematic was redesigned as discussed at the previous meeting. The new plans show 34 spaces, which were added by the septic system. Mr. Lavelle stated that he wanted to show the proper amount of parking spaces and did not wish to request a waiver. The new design shows 34 spaces, however not all would be paved. It would not be necessary to regrade and two sections of the parking area would not be paved until needed. Mr. Lavelle stated that he would like to pave only 17 spaces at present as that was all that the present applicant required for his business. He requested that the remainder of the spaces be left as gravel and loamed over. The spaces would be in the plan, and, if necessary could be paved if a future owner or use required more paving. Mr. Dziechowski inquired about the specification for parking space width. Mr. Lavelle replied that the width of most of the parking spaces was 9 feet and the length is eighteen feet whereas before the spaces were ten feet by twenty feet. Some of the spaces are nine feet by twenty feet.

Chairman Killam stated that the required parking spaces did not need to be paved and Mr. Dziechowski agreed. Ms. Killam asked if the fire chief had seen the new plan. Mr. Lavelle responded that he had. Ms. Killam stated that the Board would require a letter from the Fire Chief. Mr. Lavelle stated that he would get a letter for the Board. He also stated that he had a letter from the Police Chief from the Board but as yet had nothing from the Road Agent, but would shortly.

Ms. Killam asked if there were more questions. Ms. LaBranche asked Mr. Lavelle about the correct number of parking spaces and asked if there were 37 spaces on the new plan. Mr. Wolters stated that he counted 34 spaces. Mr. Lavelle stated that the new spaces would be

marked on the plot but would not be paved, only graded and loamed. Ms. LaBranche asked if there would be a new spin buffer and Mr. Lavelle replied that there would not be. Ms. Killam asked if there were any more questions from the Board. Ms. Killam asked if Mr. LaChance of Stantec Engineering had questions.

Mr. Lavelle stated that he would give the plans to the Town Engineer and Rockingham Planning Commission for review regarding the revised drainage calculations.

Mr. LaChance stated that Mr. Lavelle needed to note on the plan that the use would be for a professional office space. Mr. Lavelle stated that it was on note 5 of the cover sheet. Mr. LaChance stated that Mr. Lavelle needed to change the wording from Commercial Office Space to Professional Office Building. Chairman Killam agreed.

Chairman Killam requested a motion for extension of jurisdiction and one for continuation of hearing consisting of a site walk on November 22, 2009 at 1:00 p.m. and continuation of jurisdiction to December 16, 2009.

Mr. Dziechowski moved that jurisdiction be extended to December 16, 2009.

Mr. Dziechowski made a motion for continuation of hearing to include one site walk.

Mr. Lavelle asked for an extension of jurisdiction to January 31, 2010 in case there was no quorum on December 16, 2009.

Mr. Dziechowski moved that jurisdiction be extended to January 31, 2010 in case there was no quorum on December 16, 2009. Selectman Bennett seconded the motion and all members of the Planning Board present voted in favor of extending jurisdiction on the application until January 31, 2010.

Member Dziechowski made a motion that the hearing be continued for a site walk on November 22, 2009 at 1:00 p.m. and to continue a public hearing until Wednesday, December 16, 2009. Selectman W. Bennett seconded the motion and all members of the Board present voted in favor to continue the hearing for a site walk on November 22, 2009 at 1:00 p.m. and to continue a public hearing until Wednesday, December 16, 2009.

Mr. Harte, the applicant, requested that the abutter, Mr. Longchamp be invited to the site walk. Ms. Killam agreed.

Mr. Walters asked if there were a problem with water. Ms. Killam stated that it would be a problem for code enforcement and that Mr. LaChance should call Mr. Jones, the building inspector or that the abutter should call.

Old/New Business

1. Expiration of Conditional Approval dated January 23, 2008 for Birdsall for a 2 lot subdivision application for the Estate of Katherine Birdsall, c/o Daniel Birdsall, at Maple Avenue/Kelley Lane, Map 9 Lot 59 as submitted by the applicant's representative Charles Zilch of S.E.C. Associates

Chairman Killam read a letter dated January 23, 2008 for conditional approval of the new lot into the minutes. Ms. Killam stated that the applicant wrote back stating that they were selling the property and did not want to record a subdivision. The Board approved the lot two years ago and the approval has expired. Mr. Dziechowski asked how the property was listed. Ms. Killam responded that MLS had it listed as a large lot with an approved subdivision.

Mr. Bennett stated that the Board should send a letter and revoke the subdivision according to the ordinance. Ms. Killam read a letter drafted by the Planning Board stating that the approval for the proposed subdivision into the minutes must be revoked because conditional approval had expired. Mr. Dziechowski objected stating that the applicant spent a lot of money for the subdivision plans and that it was really clean and asked what the process would be if the application for subdivision were revoked. Ms. Killam responded that they would have to start from the beginning. Mr. Wolters asked if the applicant was aware that the conditional approval for the subdivision was expiring. Ms. Killam responded that the Applicant had sent a letter but it was not in the package. Mr. Dziechowski stated that they want to keep taxes lower. Ms. Killam stated that if the Board agreed, then a letter would be sent with changes stating that conditional approval had expired and would be revoked.

Mr. Fletcher left the meeting.

Other

1. Review deficient subdivision bonds for three subdivisions due to a report of annual road inspection due to a request from Selectmen's office to revoke road bonds for 3 active subdivisions – Jameson Ridge, Ashford Drive and Maplewood as they were no longer adequate.

Ms. Killam first explained the bond process for subdivisions. The developer comes to the Town with a bond and the Selectmen's office together with Town Counsel drafts the bond agreement and it is signed off by the Selectmen and the Town Engineer. The developer is supposed to maintain an adequate bond amount. Ms. Killam stated that the developer had been notified and that the first letter was sent on October 20, 2009. Ms. Killam read the letter into the minutes and stated that all three letters should state that the bond amount was no longer adequate. She further stated that the letters need to be written in accordance with the bond agreement before the bond goes before the planning board for revocation and offered to assist with writing a letter.

Ms. Killam stated that first development was still in active construction and it could take years before the road was finished, and that the road should not be top coated until the subdivision was built out.

Ms. Killam stated that the second subdivision, Ashford Drive, has already been built and the houses occupied, but the road was never top coated and the bond was inadequate. Ms. Killam stated that revoking the bond after the subdivision was built out punished the homeowners, not the developer. Ms. Killam further stated that the road still needed to be top coated and that over time there would be run off and the shoulders would degrade.

Selectman Bennett asked what the amount of the bond was. Ms. Killam responded that the bond for Jameson Ridge was \$104,000 and increased to \$169,000, a \$65,000 increase. The bond for Ashford drive was \$17,000 and increased to \$97,000. The current bond for the third subdivision, Maplewood subdivision on Brittany Lane is at \$23,000.

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Mr. Wolters asked whose responsibility it was to make sure that the bond amounts are maintained at an adequate level. Ms. Killam stated that it was the responsibility of the Selectmen. Ms. Killam stated that she had gone to the Board of Selectmen with the issue Board every year. Mr. Bennett replied that the Board had success now and Ms Killam replied that the Selectmen merely sent it back to the Planning Board and further stated that better notice needs to be sent. Mr. Bennett suggested that Ms. Killam talk to the Town Administrator and that Selectman Friel and Town Counsel stated that the letters were drafted by Town Counsel. Ms. Killam stated that if the bonds come back to the Planning Board with a request for revocation, the Board needed to look at the RSA's. Selectman Bennett asked if the Town had grounds to sue. Mr. Wolters stated that it was a problem all over the State.

Ms. LaBranche stated that the Board needed to read the approval letter and that according to how the letter was written, the Planning Board may not have the right to revoke and read from the RSA's/ Ms. LaBranche asked what the conditions for approval were. Ms. Killam responded that the conditions for approval were payment of all fees and bonding and that once the bond is in place it is signed and recorded, the Planning Board does not follow up.

Ms. LaBranche read Ordinance 380:1A –subdivisions into the minutes and stated that the authority lies with the Board of Selectmen. Ms. Killam stated that the RSA's stated a great deal when or if a bond can be revoked.

Mr. Bennett stated that the subdivision is complete and the houses were occupied. Ms. Killam stated that revoking the bond would not punish the developer. She stated that the first subdivision was 30% built and one of the other subdivisions was 100% built. Ms. Killam stated that the sufficiency analysis had been done annually by the Town Engineer and provided to the Board of Selectmen. Mr. Wolters asked if the Board of Selectmen had read it. Chairman Killam stated that the Board of Selectmen probably read it, but did not take any action. Mr. Dziechowski stated that one of the developers was already mandated. Mr. Bennett agreed that it should be the developer who was punished, not the homeowners. Ms. Killam stated that Selectman Friel and the Town Administrator were working on the problem. Mr. Bennett stated that it had not been brought to other Selectmen. Chairman Killam stated that the Town Administrator wrote a letter to the Planning Board stating that the subdivisions have to be revoked and that she would speak to the Town Administrator. Mr. Dziechowski read 674:41 into the minutes. Ms. Killam stated that one way to achieve compliance, for the Town to stop issuing building permits. Mr. Guischard pointed out that other roads were not accepted. Ms. Killam replied that the bonds were still sufficient.

Chairman Killam stated that the Board of Selectmen needed to address the issue in a workshop topic regarding the process of review of road bonds. Mr. Bennett stated that one of the subdivisions was not built out and Chairman Killam replied that it was Winslow Drive Realty Group. Mr. Dziechowski stated that Ashford Drive was built out. Chairman Killam stated that one other subdivision had one lot left and that Jameson Ridge was not yet built out. She further stated that this was the first year Jameson Ridge had gone out of compliance, but that the other two developments had been out of compliance with the bond amount for a few years. Chairman Killam stated that the Planning Board needed to work with the Town Administrator to enhance the review process. Mr. Bennett stated that it was grounds for stopping building permits. Mr. Wolters stated that the developers were out of compliance with the bond. Ms. LaBranche read RSA 674:36 III B into the minutes and stated it said that a municipality has the power to enforce bonds.

Selectman Bennett stated that the Board of Selectmen was responsible but it needed assistance from other departments. Chairman Killam responded that she had gone to the Board of Selectmen every year and this is the first year she has had a response. Mr. Bennett stated that 674:36III B is grounds for putting a stop to building. Ms. LaBranche stated that 676:12 refers to 674:36 III B and states that there should be no occupancy permit.

Chairman Killam stated that all houses need streets and utilities. Mr. Bennett asked if that included top coat. Chairman Killam stated that top coat was not needed in an active construction site at least not until the subdivision was 75% complete. Chairman Killam and Ms. LaBranche agreed that a provision for review of the bond amount needed to be included in the bond agreement. Mr. Bennett asked if that meant the Town could withhold the building permit. Ms. LaBranche replied that it would depend on the bond agreement. Ms. Killam stated that the developers did not get a bond agreement, they got a bond.

The Board agreed that a review of the bond amount needed to be written into the bond agreement.

2. Continued discussion: Proposed Small Wind Turbine Ordinance

Chairman Killam dismissed Mr. Aaron LaChance and passed out the Model Ordinance as found on the web site for the New Hampshire Office of Energy and Planning and read the ordinance into the minutes. She then briefly reviewed the provisions for the Board and asked if the Board wanted to adopt an Ordinance. Ms. LaBranche stated that the last day to post a public notice for a public hearing was December 24, 2009. Chairman Killam stated that small wind turbines were already regulated by State Law, but that the Planning Board could decide where to allow them and how to regulate them but it was up to the Building Department to enforce the Code. Ms. Killam stated that she had an email from the Chairman of the Zoning Board suggesting wind turbines be allowed in certain zones and to allow by special exception in other zones.

The Board discussed types of restrictions such as maximum tower height and lot size. Chairman Killam asked Mr. J. Recesso if he had reapplied for a permit and Mr. Recesso responded no, that the permit was denied on the basis of advice of Town Counsel and that he wished to be part of the decision process. Mr. Bennett stated that Mr. Recesso needed to reapply and appeal.

Mr. Bennett stated that set backs and blade failure needed to be considered. Ms. Killam responded that those issues were not in the model ordinance. Mr. Bennett suggested a maximum height of 150 feet and further restrictions in residential zones. Mr. Bennett stated that system height, tower height and blade length needed to be considered. Mr. Dziechowski stated that the blades needed to be 35 feet above the tree canopy for maximum wind effect. Mr. Bennett stated that the decibel level should be at 55. Mr. Recesso stated that the RSA's stated that the decibel level should be at 55. Mr. Bennett responded that the Model Ordinance said 60 decibels and the decibel level should be 55 in residential areas.

Ms. Killam asked about shadow flicker being 30 hours per year over adjacent buildings. Mr. Recesso stated that he had talked to Eric Stetzler regarding shadow flicker and Mr. Stetzler had informed him that shadow flicker was put in the model ordinance because large style blades and turbines create a large shadow flicker while the smaller commercial or residential towers on a 40 to 60 foot monopole do no cause as much. Mr. Bennett stated that the Model Ordinance was

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straight from the RSA Idem d page 64. Ms. LaBranche read 674:62-66 RSA. Mr. Bennett stated that shadow flicker is a consideration of sun elevation, elevation of the tower and set back.

Chairman Killam stated that the Board needed to craft an ordinance that the Building Inspector could enforce. Mr. Recesso responded that shadow flicker could be measured through a computer program or video tape. Mr. Bennett responded that shadow flicker would be part of the application, and therefore could not be measured afterwards and that it could be computed by computing sun angle, vegetation and distance. Chairman Killam asked if there were an equation in the model ordinance and Ms. LaBranch replied no. Chairman Killam asked how the building inspector could tell that shadow flicker was limited to 30 hours per year. The Board agreed that an equation for shadow flicker should be based on an empty horizon.

Ms. LaBranche stated that a similar study regarding sun and height of buildings was done for Hampton Beach. Mr. Dziechowski stated that the info on the sun can be downloaded free and could be plotted for the entire year. The Board continued to discuss how shadow flicker could be measured and compliance enforced.

The Board next discussed how to tell if a wind tower were abandoned Mr. Bennett stated that wind towers should be treated the same as other abandoned property. Mr. Recesso stated that the cost of tearing down a wind tower was minimal, that they can be taken down and reused or resold, but not the foundation. Mr. Recesso stated that some towers even had hinges and it takes about four hours to take one down. Chairman Killam asked if they were transferable real property and Mr. Recesso replied that they were.

The Board also discussed whether the model ordinance would preclude erecting a structure on adjacent property within one hundred and fifty feet of an existing wind tower. Ms. LaBranche stated that an ordinance should read that a wind tower had to be within 150 feet of the property line.

Chairman Killam asked that the Board read through the model ordinance and decide what to discuss at the next workshop, December 2, 2009.

Mr. Recesso stated that the RSA's are already very restrictive and are designed to prevent home made wind turbines, that the RSA's limit where wind turbines can go, the impact and the number of turbines on the property. Chairman Killam asked how and Mr. Recesso stated that it limits the number of kilowatts produced to 100 kw. Chairman Killam stated that there is nothing in the RSA that limits one wind turbine on a property.

Chairman Killam stated that she did not want to restrict wind turbines in zones but wanted to restrict to lot size, one acre, 2 acre or greater. Mr. Wolters stated that small lots would automatically be disqualified. Mr. Recesso responded that small turbines could be mounted onto a building and could run a chicken coop or a horse barn. Mr. Bennett stated that horizontal access turbines could be placed from peak to peak on a roof and there would be no shadow factor.

Chairman Killam announced that there would be a workshop on the second Wednesday and requested that the Board review minutes at the hearing on December 2, 2009.

Mr. Joseph Guischar made a motion to adjourn the meeting of the planning board at 10:00 p.m. Member T. Dziechowski seconded the motion and the Board voted unanimously to adjourn the meeting at 10:00 p.m.