

**ATKINSON PLANNING BOARD**

**Atkinson, New Hampshire**

**Public Hearing/ Workshop Meeting**

**Wednesday June 17, 2009**

Present: Sue Killam, Chairman; Paul DiMaggio, Vice Chairman; Regular Members Ted Stewart; Michael Fletcher; Tim Dziechowski

Alternate: Harold Morse; John Wolters; Loren Albright, Mike Turell

Selectman Ex-Officio: William Bennett

Ms. Killam called the meeting to order at: 7:40 PM

- 1) Central NH Regional Planning Commission notice of CTAP workshop on Impact fees, June 24, 2009 at Derry Municipal Center
- 2) Rockingham Planning Commission announcement re: Availability of Planning Assistance Grant Funds
- 3) City of Haverhill Notice of Planning Board Meeting 6/10/09
- 4) Department of Transportation copy of Driveway Permit Application for Thomas Pignatello
- 5) American Planning Association advertising brochure
- 6) Town and City LGC magazine
- 7) Department of Environmental Services info re State Water Resources Plan
- 8) RPC Announcement of 2009 Planning Board Training Series to be held June 25
- 9) Budget/Expenditures spreadsheet through 5/31/09

Outgoing

- 1) Decision Letter Re: 9 Hole Executive Par 3 Golf Course
- 2) Decision Letter Re: Lot Line Adjustment at 34 and 36 Winslow Drive

After calling the meeting to order and reading the correspondence into the minutes, Chairman Killam requested that the Planning Board review the minutes from the May 20, 2009 Planning Board Meeting. After reviewing the minutes, the Planning Board voted unanimously to approve subject to the changes discussed during the review which consisted of a few typographical errors.

Chairman Killam then stated that as of the Planning Board Meeting, she had not heard from Julie LaBranche regarding grant funding for the requests discussed at the May 20, 2009 meeting.

During the review, the Planning Board discussed prior business. Chairman Killam stated that Mr. Friel had informed her that the bids for the hydrology study ranged from 40k to 170k. Selectman Bennett commented that the high bids were for a final design study. Member Dziechowski requested that Chairman Killam ask Mr. Friel to send the Board examples of studies made by other towns to look at.

Discussion: Re: Conceptual plans for 6 Main Street, Kevin Barden, Paul Carideo, and Steve Lewis

Chairman Killam opened the discussion by stating that Kevin Barden was working on the property at 6 Main Street in Atkinson and had received a variance from the Zoning Board of Authority for his changes to the front set back. Chairman Killam further stated that Mr. Barden was before the Board to discuss conceptual plans for his use of the property.

Paul Carideo, the engineer representing Kevin Barden, passed out the map sheets and plans for the Board to review. Mr. Carideo informed the Board that the proposed site was opposite the post office and between the Community Center and Difeo Oil. That it was a brown duplex house located in the commercial zone, with 30 feet of the lot in the back in the R2 zone. He stated that the lot was one of the largest in the commercial zone and that the applicant was requesting to put in a coffee shop.

Mr. Carideo stated that the issues brought before the Zoning Board of Adjustment ("ZBA") by the applicant were first a variance to straighten the front of the building which was granted by the ZBA without conditions.

The second issue brought before the ZBA was to build a small entry with stairs. That variance is conditioned upon the Planning Board approving that design.

Mr. Carideo then reviewed the design for the Board. He stated that regulations required a 100 foot buffer from the residential area but there was only enough room on the site for a 50 foot strip. He informed the Board that all work would be on the commercial section of the property including the parking and the septic.

Chairman Killam asked where the TR2 zone was in relation to the property and Mr. Carideo replied that it came in 30 feet onto the property at the rear.

Vice Chairman DiMaggio asked Mr. Carideo the size of the lot and Mr. Carideo replied that the lot was 1.71 acres.

Mr. Carideo further stated that the wetlands had been flagged and located at the East corner and that most of the wetlands were on abutting property. He stated that the elevation in the back of the property was higher than the side. The applicant was proposing that the septic be installed in the back, due to 100 foot setback for wetlands. He stated that the front of the lot was not parallel, that the applicant proposed a landscape strip and a street strip 15 feet wide and that trees could be provided.

Member Dziechowski asked if trees were a sight safety issue, and if so the Planning Board could waive planting trees. Mr. Carideo replied that the applicant proposed landscaping the strip with lower plantings. Chairman Killam stated that the Board would have to review sight line requirements. Mr. Carideo further stated that the landscaping may not be the height and width required for the site, but there would be an appropriate number of plants.

Mr. Carideo went on to state that the applicant was requesting a variance to rehabilitate an older building and was proposing nothing different than what was already there. He pointed out that there were abutting properties with parking in the front and no landscaping. He stated that the applicant planned to retain the large spruce trees along the abutter's property line and that there would be a 15 foot additional buffer for the residential property. He stated that the applicant had talked to two other abutters and that the abutters' homes off Robie Lane were 450 feet from the coffee shop and that the area was heavily wooded with wetlands.

Mr. Steven Lewis then addressed the Board, informing them that he had advised Mr. Barden to talk to everybody. One of the abutters had concerns with trash blowing from the parking lot onto their property and that the applicant had told them that he would install a fence and that he would pull back some of the parking area so that it would all lie in the commercial zone and add trees along the abutters' property line.

Chairman Killam asked how many seats there would be. Mr. Barden replied that he had 57 seats at his restaurant now and that he planned on 60 at the new location. Selectman Bennett asked Mr. Barden where his current restaurant was located and Mr. Barden replied that it was Eggy's Diner in Plaistow. He further stated that he had been at that location

for 17 years and that the landlord does not do anything to maintain or improve the property, that he wanted control of the property.

Member John Wolters asked if the applicant needed all that parking. Mr. Barden replied in the affirmative, especially on Sunday because Eggy's was always full on Sunday. He stated that it was a very popular spot and he had acquired a large following over the years.

Mr. Carideo informed the Board that there was also room on the site for office or personal space but that they were maximized on the current septic based on the State figures but that they would water meter the outflow to see what they had and then proceed. He then stated that there were 44 parking spaces on the site, the requirement is 30, one for every two seats and one for each employee.

Mr. Lewis stated that the applicant had slid back the parking for Mr. Don White, one of the abutters who preferred a 30 foot buffer strip between the properties rather than being really close and that Mr. White is a very nice abutter. Mr. Lewis is also an abutter across the street to the proposed site. Mr. Lewis stated that the applicant also talked to the other abutters included Difeo Oil, a business and residence since the proprietor lived on site; the Pignatiello's who own lot numbers 7 and 9, including the Post Office. Mr. Barden stated again that he took the last two spaces off.

Selectman Bennett stated that the hours at Eggy's were fairly restricted. Mr. Barden replied that the hours at the proposed site would be similar to the hours at his current restaurant, Eggy's.

Chairman Killam asked what the hours at his current restaurant were and Mr. Barden replied that they were 6:00 a.m. to 2:00 p.m., seven days a week. Mr. Dimaggio remarked that in that case there would be no live music and no booze, and Mr. Barden agreed.

Mr. Lewis stated that one of the abutters was concerned because the plan said "bar" and he thought it would be for alcohol, but Mr. Lewis explained to the abutter that it would be a breakfast bar. Chairman stated that it should be called a counter, but the applicant stated that the current terminology was breakfast bar.

Mr. Lewis stated that the design of the structure would be similar to the other commercial properties abutting it. He also stated that he was proposing an airlock at the front entrance so that people in the front seats would not freeze during the winter when the door opened.

The handicap entrance will be in the back, because the back is higher and the parking lot will not have much of a difference in elevation. That for a coffee shop, egress front and back makes a lot of sense. Right now, the building does not have a centered door, but he added one in the plans. He also stated that the building would be the same color as the post office. Chairman Killam stated that this design information was not on the plans. Mr. Barden replied that he did not bring a lot of design information because right now, it was mostly conceptual. He stated that he had some design information and passed some plans around for the Board to look at. He noted that the entrance was different than the one he was proposing and the one on the site plan is the one being proposed.

The Board discussed the design plan. Chairman Killam asked about the roof line and Mr. Lewis replied that the plan was to straighten it out; at present it was a hip roof. Selectman Bennett remarked that anything would be an improvement. Mr. Lewis then stated that, the plan called for a sprinkler system and the site had off site water so no well would be required. He stated that the site had also natural gas and that only 4% was poorly drained.

Selectman Bennett inquired if Mr. Barden owned the property and Mr. Barden replied that he did not, that he was awaiting approval from the Planning Board for the proposed use. Chairman Killam replied that it was owned by Bank of New York. Mr. Bennett inquired if it had been foreclosed.

Member Timothy Dziechowski inquired about conservation and run off from the parking lot and the little fishing pond. Mr. Barden replied that drainage would be collected with internal drainage into an underground chamber system, recharged and drained beyond the pond.

Mr. Dziechowski stated that he did not know what the State did about drainage at the site at present. Mr. Barden

replied that there was a 25 foot culvert off Route 121. Chairman Killam asked him to further describe the drainage system. Mr. Barden replied that it was an underground chamber with 25 year storm filters and placed under the access road. Mr. Lewis stated that it was similar to what was done at Manchester Airport when they extended the runways; the leach system is under the pavement.

Chairman Killam asked about the details for the plans. Kevin Barden replied that there were two sheets and he would bring them in. Chairman Killam replied that she had not seen them so that would be great.

Mr. Lewis stated that he did not realize that the property went all the way to the dam and the fish pond; that currently it was a mass of weeds and Mr. Barden intended to clean everything up, mow it and place some benches by the pond. He stated that the Town had approached him regarding the dam and the driveway. The driveway allows the Town to access the dam making it easier for the Town to access the dam structure and will make the pond look nice.

Vice Chairman DiMaggio asked what variances the applicant had proposed to the ZBA. Mr. Barden replied that he presented one request but that the ZBA had split it into two, one to straighten the building to make it flush which would take the building out of the 75 foot area required by the Town Zoning. The other variance was the entrance and stairways that lead out. The ZBA approved the first variance and put a condition on the second variance stating that the applicant would have to work with the Planning Board to make sure that it was necessary. Mr. Barden stated that he did not have the exact details as of yet.

Chairman Killam stated that the minutes to the ZBA meeting were not available because the recorder was unable to finish them because her recording equipment was broken. That she needs a transcriber with a headset and foot pedal. Mr. Lewis stated that he had one and that the Town was welcome to borrow it. She further stated that the ZBA did not grant final approval because they wanted approval from the Planning Board for the restaurant before they granted approval for the additional entrance.

Mr. Barden stated that it was an existing building, that they were not expanding, that the only expansion would be for the roof overhang at the loading dock. , which is in the zoning requirements, the only problem is the wetlands set back. Mr. Lewis stated that the loading dock would be pushed over 2 feet to meet the setback.

Vice Chairman DiMaggio asked about change of zoning from residential. Mr. Barden replied it would fall under the definition of a tea room or coffee shop in the Town zoning regulations. Mr. Barden then requested to formally submit the application at the July meeting of the Board. Chairman Killam asked the applicant if the septic design had been submitted to the State. Mr. Barden replied that he would submit it tomorrow. Member Dziechowski asked what type of chamber system it was. Mr. Barden replied that it was not a chamber system due to space, but it would be a Presby system with multiple tanks and a pump system with gravel on top and situated under the pavement. A chamber system would have been too large.

Vice Chairman DiMaggio asked how the use of the site could be changed from a nonconforming use to another nonconforming use.

Chairman Killam replied that he was changing the site from a nonconforming use to a conforming use, a commercial use and that the structure was nonconforming.

Mr. Lewis stated that he had suggested to the applicant to go to the ZBA first to resolve variances in zoning issues before he went to the Planning Board.

Vice Chairman DiMaggio stated that the applicant was not proposing changing the building any more than the ZBA allowed them to, but only the use.

Chairman Killam read the Zoning Regulation for the Board. She stated that the existing use for the building as a duplex does not conform to Town Zoning regulations and that the owners were given a variance 30 years ago. If you look at it that way, then it conforms, because they were given that use as an allowed use.

Mr. Lewis stated that multifamilies are allowed only in cluster developments.

Vice Chairman DiMaggio stated that seating outside would be nice, but would not be conforming. Mr. Barden stated that there was an existing deck, but they were not requesting a variance for outside seating at this time. Mr. DiMaggio stated that other commercial properties in that area had outside seating. Chairman Killam agreed that the Board would have to look at the reasonableness of outside seating.

Mr. Lewis stated that he looked at every building in the zone and none of them conformed to the required setbacks. Most of them were 30-40 feet and Difeo's was 52 feet. Chairman Killam agreed that none of them had landscaping, either.

Member Harold Morse asked if there were another place for the driveway.

Mr. Carideo replied that it made the setback 25 feet less wide, that it was too steep, and that moving the driveway would require taking out the spruce trees that lined that side of the property.

Chairman Killam thanked the applicant and stated that the Planning Board would expect the application to come in for the July meeting.

**Discussion:** Re: Development of regulations pertaining to Small Wind Turbines

Chairman Killam asked the Planning Board to discuss what direction it wanted to go in regard to small wind turbines.

Selectman Bennett stated that if the Planning Board adopts an ordinance, that is law until it is voted on at Town Meeting according to the attorney at the LGC workshop. Vice Chairman DiMaggio agreed. Chairman Killam stated that it is not law and Selectman Bennett requested that she get something factual. Chairman Killam agreed that once something is posted for Public Hearing, if someone wants to apply for a permit then it is better to comply. Selectman Bennett stated again that the attorney said it was force of law. Chairman Killam asked that he show the Board the RSA's.

Selectman Bennett stated that there were two applications before the Town already, to which he had no objections, but that the Town could conceivably have a 150 foot tower with a 150 foot setback. The State just says that the Town could not require setbacks greater than 150 feet and that the State puts no restrictions on setbacks.

Chairman Killam requested that the Board discuss the issue in a positive fashion, instead of a negative tone.

Selectman Bennett replied that he wanted to point out that the Town should be concerned about where and what because of possible problems with wind turbines. Vice Chairman DiMaggio stated that he was in favor because he wanted his kids to have a future. Selectman Bennett went on to say that there are many types of turbines and that they can come down due to wind turbulence. He stated that the blade can fail and come off and that a 100 KW wind turbine is too big. He further stated that the Board needed to look at the commercial zone versus the residential zones.

Chairman Killam stated that the RSA has upper limits for the output of small wind turbines. Member Dziechowski stated that most people want a size that generates enough power to sell back. Selectman Bennett stated that 100 KW or less is the State's definition of a small wind turbine. Vice Chairman DiMaggio stated that the Board needed to look at the maximum spin of the blade, there could be a trajectory of 200 feet if one of the blades sheared off. Selectman Bennett asked about legislation and Vice Chairman DiMaggio stated that the Board needed to find a study. Mr. DiMaggio and Mr. Bennett agreed that the Board needed to see some studies. Member Mike Turell stated that there were manufacturing studies available. Member Dziechowski stated that the Board should not over regulate out of paranoia. Selectman Bennett stated that RSA 674:62 does not restrict, it only says that Towns cannot unreasonably restrict. Mr. Turell stated that the small turbines only make a dent in the electric bill. Selectman Bennett stated that 4 KW was the average home consumption. Mr. Turell stated that his home needs 10-12 KW.

Selectman Bennett stated that if the Town goes into the summer without an ordinance, they could have a 150 foot tower on a lot with a 150 foot setback. Member Turell asked about cell towers. Selectman Bennett replied that cell towers are a static structure. He stated that the Town needed to tighten up on the State model ordinance and cautioned

against just using the model without further study.

Vice Chairman DiMaggio stated that the Planning Board Ordinance would be in effect until the Town elections. Selectman Bennett stated that the Board should adopt something before July 11, 2009. Mr. Dziechowski stated that this might not be possible. Mr. Dimaggio suggested that the Board post the model ordinance as proposed zoning ordinance for public hearing which would restrict any activity for right now.

Vice Chairman DiMaggio stated that the Board could change the proposed ordinance and Selectman Bennett stated if the Board could do that, it would be good. Mr. Turell remarked that there would be a problem if they posted the model ordinance and then there were significant change. Selectman Bennett suggested that residential areas be restricted to 25 KW towers. Vice Chairman DiMaggio replied that the Town still had two to three acre residential zones. Selectman Bennett cited RSA 674:62.. Member Dziechowski stated that the tower could be made safe. Vice Chairman DiMaggio stated that 80 foot towers are less offensive.

Member Dziechowski replied that the tower has to be tall in order to work; otherwise there wouldn't be enough power, partly because of the trees in town.

Member Turell stated that studies show that horizontal towers on roofs don't turn effectively with the wind. Selectman Bennett disagreed stating that a horizontal tower would track a slower change.

Chairman Killam stated that the Board had heard Vice Chairman DiMaggio, Selectman Bennett and Member Turell and suggested that the Board consult with the Town attorney.

Selectman Bennett stated that he had consulted with the Town attorney and he had stated that he would deny any but those in commercial zones.

Vice Chairman DiMaggio stated that the Board should have a meeting with the Town attorney. Member Dziechowski stated that issues with the wind turbines were the same as wetlands issues, they must be done at Town Meeting. Chairman Killam stated that zoning can be done by petition at a special town meeting but the rest of the Board disagreed stating that special town meetings are too expensive.

Chairman Killam then asked Member Dziechowski what the next step should be and he replied that the Board needed to look at the State, other towns and suggested that they talk to Eric Steltzer. Vice Chairman DiMaggio asked if Mr. Dziechowski had looked at other data and Member Dziechowski replied that he was in the process of looking at it and that well-engineered systems cost \$160k. Selectman Bennett asked if the Board had an official list of e-mail addresses for the board members and Chairman Killam replied that there was one in Shirley Galvin's computer.

Harold Morse felt that the State regulation, RSA 674:63 says in part that if the Town does not have an ordinance, then State regulations apply. Selectman Bennett agreed.

Selectman Bennett stated that it would be possible to buy a tower and generator system that meets the specifications. Member Dziechowski stated that a do-it-yourselfer could buy a used tower, wood propeller and a generator and put them together. Vice Chairman DiMaggio stated that you could float solar cells on a balloon and rotate them.

Chairman Killam asked Member Harold Morse what he wanted to do.

Selectman Bennett stated that there were 2 different versions of the model ordinance on the OEP web site, one a PDF and another Word document and he said they should both be looked at closely especially for discrepancies. Vice Chairman DiMaggio stated that the Board had to figure out what to do. Harold Morse stated that the Board needed to talk to the Town Attorney first. Member Dziechowski agreed, the Board did not need a lawsuit. Member Dziechowski stated that it was not necessary to post an ordinance now, it would be better to wait. Member Loren Albright stated that he wanted to see some examples. Selectman Bennett stated that they did not want a blatant run around State regulations. Chairman Killam stated that the Planning Board was charged with land use regulation. Vice Chairman DiMaggio stated that the Board needed to know the engineering in order to determine the setbacks. Chairman Killam stated that she did not want to post something without studying it. Selectman Bennett stated that the State regulation

has setbacks. Chairman Killam stated that 2 applicants with 4-5 acre lots were denied. Selectman Bennett stated that it was at the Town attorney's direction. Chairman Killam stated that everyone wants to be cautious and that she wanted to go to the Town attorney. Vice Chairman DiMaggio stated that the Board should invite Eric Steltzer. Selectman Bennett stated that the Board could talk to him on the phone and Member John Wolters suggested a teleconference. Harold Morse stated that the Board needed to confirm that the state law was a 150 foot setback.

Vice Chairman DiMaggio asked for a motion to adjourn. Harold Morse made the motion, seconded by Member Mike Turell and the Board voted unanimously to adjourn. Chairman Killam adjourned the meeting at 9:23 p.m.

Respectfully submitted

Karen Wemmelmann

APPROVED \_\_\_\_\_ 10/7/09 \_\_\_\_\_