

ACTON PLANNING BOARD MEETING

November 19, 2009

APPROVED

A. ROLL CALL – 7:00

Members present were:

Chip Venell – Chairman

Thomas Cashin – Vice Chairman

Yoli Gallagher

Keith Davis

Jessica Donnell – 1st Alternate (Voting in place of Mr. Goodwin)

Members absent were: David Jones- 2nd Alternate

Also present were Kenneth Paul, Code Enforcement Officer; Peter Marchant from KJK Wireless; Larry Julius and John Nadeau, residents.

Mr. Venell mentioned that Mr. Goodwin has resigned his position with the Board, therefore, the Selectmen will be appointing a new alternate to take the place of the alternate Member who will be elevated to a voting Member position.

B. MINUTES

November 5, 2009 – A Motion was made and seconded to approve the Minutes of the November 5, 2009 Meeting as submitted. Davis/Cashin – Unanimous.

C. UNFINISHED BUSINESS

KJK Wireless for US Cellular – 1881 Route 109 – SITE PLAN REVIEW for a Wireless Communications Tower – Peter Marchant representing KJK Wireless mentioned that when he was last before the Board, they decided to obtain information from the FAA regarding the height of the tower and its potential problem with the Old Acton Airport. He stated the Code Enforcement Officer sent a letter to that agency and obtained a response indicating that the FAA has no jurisdiction over that airport, therefore, the proposed tower doesn't have to be moved. He questioned how the 190' high tower could affect the airport when it is almost a mile away. To Mr. Venell's question whether he had seen a copy of the letter, Mr. Marchant answered in the affirmative.

Mr. Venell explained that if the airport was a public strip using FAA regulations, the placement of the tower on the site would be an issue for the Board. He referenced an e-mail from the FAA wherein that agency said although the Old Acton Airport is a private air strip, the author of the e-mail would supply the Board with the calculations the FAA would use if it were a public strip within a week or so. He stated that information has not as yet been received.

To Mr. Marchant's comment that he didn't see where they [the FAA] were going to do any follow up, Mr. Venell stated that comment was contained in the October 30, 2009 e-mail and the author of the e-mail said he would be happy to look at the air strip as if it were in public use, but he would not be available to do so for about a week or so. He didn't see how the Board could approve a Conditional Use Permit for a structure that may impede air traffic.

To Mr. Davis' comment that he has said that the original proposed location was best, Mr. Marchant answered in the affirmative. He mentioned with the original location, the tower wasn't directly in line with the air traffic pattern.

John Nadeau advised he spoke with Linda Steel of the FAA and she stated that the agency doesn't regulate the small air strips. He said she told him where to find the applicable standards

and he looked at them himself and thereafter drafted his October 27, 2009 letter to the Board. He stated he didn't think that the FAA would do anything, but he found out this evening that the agency will be supplying the Board with information for discussion purposes. He felt that the first location across from the Post Office wasn't a great location, but thought they could work with it. He said the second site is worse because he feels confident that someone will hit it [the tower] on a very windy day.

To Mr. Venell's question whether he has rethought using the first site across from the Post Office even though there may be more issues with the residents since it might be better from a safety point of view, Mr. Marchant said, in his opinion, the second site is better for the Town. He mentioned that according to his recollection, they have met all the criteria in the Ordinance for the Board to be able to approve this application. He pointed out that the tower will be visible no matter where it is located. He said except for the money and effort that has been put into researching the second location, he would have no problem reverting to the first site. He asked if the Board wished to talk with the abutters or the owner of the air strip?

Mr. Venell stated he would rather wait until the Board receives the FAA information and depending on how the Board may wish to use that information, they may make a decision not to approve the second site. He advised that no matter which site is chosen, the Board must conduct a public hearing and that can't occur until they have the FAA's input which more than likely won't be until the December 3, 2009 Meeting. He stated that the public hearing could be scheduled for the December 17, 2009 Meeting.

Mr. Marchant stated that no matter what the FAA says, if he feels that the second location is all right, the Board could schedule the public hearing for the first site at this time rather than wait until the FAA's information is received. He said he has no problem using the first location for safety reasons.

Mr. Venell mentioned that the Board understands that they are waiting for information from a disinterested third party, but the Board has accepted a third party's input in the past.

To Ms Gallagher's comment that it would be helpful to know how the FAA feels about the first site, Mr. Venell advised that wasn't requested.

Mr. Davis suggested that the Board schedule the public hearing and decide where the tower should go after the information is received from the FAA with Mr. Venell mentioning that the public hearing notice could include both locations.

A Motion was made and seconded to conduct a public hearing on the application for a communications tower on both sites on Thursday, December 17, 2009, at 7:00 PM. Davis/Cashin – Unanimous.

Mr. Venell advised that the FAA's input can be discussed at the Board's December 3, 2009 Meeting and that Mr. Marchant could attend if he chose to. He stated no decision will be made at that time, but a copy of what they receive will be sent to Mr. Marchant.

D. NEW BUSINESS

Pauline Bragg – 672 H Road – M224/L022 – Conditional Use Permit for Timber Harvesting – Donald Winslow advised he would be representing Ms Bragg and explained that the previous application was withdrawn at the last Meeting because the timber harvester felt the process would take longer than it would for him to complete the job. He mentioned that the situation has changed and they would like to harvest the timber in the Resource Protection District which has triggered this application.

A Motion was made and seconded to accept the Conditional Use Application of Pauline Bragg for timber harvesting in the Resource Protection District. Davis/Donnell – Unanimous.

A Motion was made and seconded to conduct a public hearing on the Conditional Use Application of Pauline Bragg for timber harvesting in the Resource Protection District on Thursday, December 7, 2010, at 7:00 PM.

A site walk was scheduled for Sunday, December 6, 2009, at 8:00 AM.

E. OTHER BUSINESS

Eagle's Trace Subdivision Drainage Problem – Mr. Cashin referenced the discussion the Board had with a resident of the Eagle Trace subdivision at the Meeting of November 4, 2009 regarding the question the resident had about the approved drainage plan. The resident mentioned that DEP did a site inspection regarding the storm water drainage which the Town never knew about. He stated he asked the Code Enforcement Officer whether he had heard anything about the problem and was told he did not. He said he didn't remember whether the Board had placed any conditions on the plan regarding a follow up meeting with the engineer concerning whether the work was built as per the approved plan.

Mr. Paul advised that the Board made no such requirement.

Mr. Venell mentioned that the Board did want to know when the drainage pond was installed for the first part of the subdivision. He said he only remembers the need for a special type of septic system, but isn't sure whether any other requirements were placed on the plan. He thought having an "after construction" meeting with the engineers and developers may be a good idea since the Town isn't able to have someone on site to determine whether construction is being done according to the approved plans.

Mr. Cashin felt there would be no problem requesting a performance report regarding the storm water drainage from the engineer when the plans are signed.

To Mr. Paul's comment that the Board can request certification that the work has been constructed according to the approved plan, Mr. Venell mentioned that certification would cover the Town and the abutters.

Mr. Cashin stated if the original engineering work is not adequate to handle the storm water drainage, the Board should be able to determine the work is not acceptable and possibly request additional engineering. He wondered if the Board could do that now for Eagle's Trace.

Mr. Paul pointed out that it isn't the storm water drainage that is the problem in Eagle's Trace but rather a low lying area near the cul-de-sac.

Mr. Venell suggested that the Board request that the engineer come in and explain whether what was built meets the specifications of the approved plan.

Mr. Cashin stated the Board also needs to determine whether the engineering was able to handle existing conditions since there appears to be some other measures that had to be taken.

Robert Smith, a resident of Eagle's Trace, advised that the water the Board is discussing was in the rear of the cul-de-sac on Patriot Way which is in the first section of the subdivision. He said the drainage was directed to the rear and that is where it flows at this time.

To Mr. Cashin's comment that the other resident who came before the Board mentioned a pond that was created to contain the storm water, Mr. Smith stated there are two such areas that have been created, one small and another larger one which were required by the DEP.

Mr. Paul advised there is a very large retention pond on the approved plan and felt that the DEP should be inspecting the sites to be sure their permits are followed.

Mr. Venell stated the next time the Board reviews a subdivision, they should require something that will let the Board know that everything was built as per the approved plan with Mr. Cashin suggesting that the Board be better informed by asking either the engineer or the developer to explain any revisions from the approved plan that may have been necessary.

Mr. Cashin suggested that the Town should contact DEP and request the information that made them request the additional work on the site.

Mr. Venell asked Mr. Paul to e-mail DEP requesting that information.

F. CODE ENFORCEMENT OFFICE BUSINESS

There was no Code Enforcement Office business to come before the Board.

G. ADJOURNMENT - The Meeting was adjourned at 8:15 PM.

Respectfully submitted,

ANNA M. WILLIAMS,
Recording Secretary