

Minutes Meeting of November 3, 2004 – Oak Ridge, Nextel, Squannacook Hills

Members Present: Stuart Schulman, Shaun Sullivan (Oak Ridge), Chase Duffy, Mark Mulligan (Oak Ridge), Cindy Maxwell, Jay Prager, Bob Cadle

The Chairman reconvened the Oak Ridge hearing.

Discussion ensued regarding why the public hearing is not being closed, which is because a new list of waivers was presented.

Atty. Deschenes put up a plan to explain why the 100 ft buffer zone waiver needs to be granted and why it is not feasible to move the project into Littleton. He said that even if they moved units into Littleton, they couldn't move the road and would still need to have the detention basin in the proposed location as shown on the current plan. He said that there needs to be a certain distance from the units and noted that the other detention basin on the other side of the lot is still in the buffer zone. He said that the project couldn't be built economically if a move is required.

The Chairman asked for something in writing so that JNEI could review it. He noted that the new waiver list is much different from the original, particularly regarding the BOH and asked why those variances are required.

Atty. Deschenes asked how the Board wants this to be done.

The Chairman suggested going through them individually, starting with the 5 ft reg. and asked why this was not economical.

Atty. Deschenes said that he didn't realize that this would be done like this.

The Chairman said that he didn't realize this either but he read the list of waivers after the last meeting and feels that this is how the Board needs to proceed. He then read the Con. Comm. letter into the record.

Dr. Horowitz said that she was under the impression that the applicant needs to go before the BOH and suggested that before the hearing is closed down the Board should get a septic plan from the applicant.

The Chairman said that he wants feedback from all boards before closing the hearing.

Dr. Horowitz said that the BOH should have the septic plan at least one month in advance.

Atty. Deschenes said that when he submits anything to the board, 23 copies are sent and he expects they will be submitted to boards. He said that they do not submit a septic design until they know

what waivers are granted. He said that in the ZBA decision it is required that all BOH and Con. Comm permits are obtained. He said that he went to the Con. Comm. prior but said that he needs to design the system after he gets the waiver list. He said that the newest waiver list is due to all of the project changes. He said that he felt that a couple of months ago they were at the end of the process and asked his engineers to submit the new list of waivers. He said that he left here last time thinking that the hearing would be closed soon, like tonight. He said that he can't say why something can or can't be done right now.

Dr. Horowitz asked Mark Bobrowski why the ZBA has to grant waivers before the septic system is completed. He said that the final design of the septic system is part of the final design and stressed that the Board can only grant waivers that speak to the uneconomics of the project. He went through general waivers and a description of how to proceed. He said that the Board does not have the authority to make the applicant go before the BOH because this is a one stop shopping process.

Dr. Horowitz said that if the project is environmentally bad, costs do not matter and it shouldn't happen. She asked where the BOH authority fits in and who comes first.

Atty. Bobrowski said that the statute envisions that Title V is a minimum standard that must be met. He said that if the town has local regs., these must be followed if it is economically feasible.

Dr. Horowitz asked whether the state cares if a town has more stringent standards.

Atty. Bobrowski said that the state cares if it makes the project uneconomic. He said that the applicant will need to redo the pro forma if some waivers are not granted. He stressed that info goes through the chair of the ZBA.

Discussion ensued re: pro forma review and any wiggle room when and if profits are larger than 20%.

Atty. Bobrowski said that the ZBA can consider in deliberations environmental damage and stressed that this is one of four most important elements.

The Chairman said that the town is a swamp and needs more stringent regs. and noted the reality of where we're living.

Mr. Degen asked who makes the decision about whether a project is uneconomic. He said that he is seeing statewide averages of 12 to 13%.

Atty. Bobrowski said that it maybe 12 to 15% but said there are no real figures.

Mr. Degen said that he thinks the PB should retain site plan review, said that he wants BOH review and wants the density whittled down. He said that the Board should take advantage of the process

as best as it can.

The Chairman asked how the numbers shake out.

Atty. Bobrowski said that the 12 to 15% range is usually acceptable, unless it is appealed and then it is not reasonable. He said that the Board has to explore this within the context of closing the public hearing and having negotiations. He said that sometimes the town wants more affordable units or other mitigations rather than reducing the density. He said that there are many ways to negotiate and stressed that this is a deliberative thing for the board to consider.

Discussion ensued regarding what could be economic.

Mrs. McEvoy asked why the Board is deliberating the profit after the hearing is closed when the info can/should be gotten before the hearing is closed.

Atty. Bobrowski said that their review of the pro forma is part of public evidence. He said that there is much of sifting of evidence after the public hearing is closed.

Mrs. McEvoy asked about show stoppers.

Atty. Bobrowski said that show stoppers need to be considered during the public hearing.

Mrs. McEvoy said that a 22 ft road for 44 units could be a show stopper.

The Chairman asked whether that is really a show stopper for DHCD. He said that if they overrule, and most town appeals are overruled, the Board has 30 days to fix it or they fix it for you.

Atty. Bobrowski said that the developer has right to go to DHCD with the original plan and with no benefits if the case is in litigation. He said that the Board has to figure out at the head of the game what will happen.

The Chairman said that he read the Palmer case and doesn't agree with the McEvoy's interpretation.

Mrs. Sartini, reporter, asked whether the pro forma is prepared by applicant and then reviewed by the ZBA consultant.

The Chairman noted that the Board's consultant pointed out some areas that were either too high or too low. He said that overall it came out within the range of expected profit.

Atty. Bobrowski said that pro forma review is to gauge whether a project falls within industry standards and guidelines. He said that the ZBA gets an idea if it is priced too high per square foot,

the price of land acquisition and area comparables. He said that no instruction is given to the pro forma reviewer other than how this applies to industry standards. He said that it is straight science, like engineering.

Mrs. Sartini asked whether the reviewer could suggest less density.

Atty. Bobrowski said that the ZBA could ask for further revisions from the pro forma reviewer.

The Chairman asked how to consider within the pro forma review how 20% of 3 million dollars is different than 20% of 5 million dollars.

Atty. Bobrowski said that there are certain fixed costs regardless of number of units, like road paving, etc.

Atty. Deschenes said that he agrees with Atty. Bobrowski regarding the process. He said that everything collected is evidence and the ZBA determines whether a 22 ft. road is a show stopper. He stressed that there has been 18 months of information exchange. He said that he is concerned that the BOS meeting on Monday is requiring that they step back and start over. He said that he will present in writing the explanation of the waiver requests. He said that the ZBA needs to hear from the BOH the environmental impacts of waiver grants, rather than the economic reasons. He said that he will not go to the BOH formally and will not provide a septic design until he knows specifically what is happening. He said that he will provide a written analysis, and then ask the ZBA to close the hearing and weigh evidence. He said that they are willing to take the chance that the ZBA has all information necessary to make a decision, noting that there is a due process that the ZBA has been following. He said that it is unnerving that two years into process they are being asked to take huge steps backwards.

Dr. Horowitz said that the BOH could have made comments 18 months ago but didn't receive anything until now.

Atty. Bobrowski said that that is because the applicant submitted a blanket waiver request.

Dr. Horowitz said that the BOH didn't know how to respond to that, although she said that they now know how to respond in the future. She said that the BOH wants to walk the property since they won't get a copy of the plan.

Atty. Deschenes said that he is willing to arrange that and stressed that they want the BOH opinion of the list of waivers. He said that he is not suggesting that that shouldn't happen. He said that he wants BOH info prior to the next meeting on one month.

Mr. Sullivan asked for clarification regarding the septic design and the 5 ft. waiver request. He said that if they don't need it they should not ask for it.

Atty. Deschenes said that he is guessing that the breakout of the system gets wider and wider, which is technical data. He said that he will provide economic impact info.

Atty. Bobrowski said that the applicant usually appeals individual conditions unless the whole decision is egregious.

Mr. Degen said that Atty. Deschenes will provide a list of why the waivers are uneconomic if imposed and stressed that once the list is provided it is better to negotiate during an open public hearing because all cards are off the table once DHCD gets an appeal.

Atty. Bobrowski said that if Atty. Deschenes comes up with a list as to what is economic and Mike Jacobs has the info, it is not unreasonable to close the public hearing.

Atty. Deschenes said that he doesn't want to argue between consultants. He said that the Board should weigh the evidence and make a decision after the public hearing is closed.

Mr. Clemens said that the Con. Comm. issued the State's order of conditions and was appealed by an abutter. He asked whether the public hearing needs to be kept open until the State rules.

Atty. Bobrowski said that any conditions would be part of the plan.

Mr. Clemens said that no wild life study is required but may be after the fact by DEP.

Atty. Bobrowski said a study will be done if DEP requires it. He said that a 40b can't escape minimum State standards. He said that the applicant has to show first to the HAC and then to the ZBA that the need for affordable housing supercedes the need to comply with zoning.

Mr. Clemens suggested that in exchange for waivers, the density could be reduced from 44 units.

The Chairman duly noted this.

Of note: the letters from abutters will be read into the record at the next hearing.

Atty. Deschenes asked what else the Board wants from them.

Of note: copies of the Oak Ridge letters will be on file at the Town Clerks office.

The hearing was continued to 12/8/04 at 7:00 pm.

The Chairman convened the Nextel hearing by reading the legal.

Scott Lacey was present as representative for Nextel and Bay Communication, noting that there is a big gap in Nextel service. He said that they identified two candidates and contacted the town to determine whether there was any suitable land for a tower, which was identified as being by Cow Pond Brook Rd. He said that they then released an rfp for bids and negotiated with the town for a 190 ft. monopole to accommodate up to 6 carriers. He said that Nextel only needs 150 ft. to close the gaps and said that a variance from the 500 ft setback requirement is needed. He said that the tower will be located within 500 ft. of town owned buildings and sheds and more than 500 ft. from abutting dwellings. He noted that the closest building is about 10 feet away.

The Chairman asked whether there is a drawing showing the individual setbacks.

Mr. Lacey said that there is no individual drawing.

Tom Delaney, Highway Dept., noted that the buildings are used for storage and salt sheds, offices, etc. He said that there are no dwellings and a maximum of 10 people at any given time in any building.

Mr. Lacey said that when this was presented to town meeting there was a plan showing a tower in this approximate location. He said that the setbacks range from 10 feet to over 200 ft. He said that the location is such that it is a town dump and certain environmental factors need to be considered. He said that Town Meeting allowed the BOS to enter into a lease with a carrier and noted that this is a traditional monopole with 6 antenna slots.

Mr. Cadle asked why the base support could not be done to a certain height.

Mr. Lacey said that they usually build the base to a certain height even if the tower smaller.

Mr. Prager asked if the tower were to come down, what is in a building.

Mr. Delaney said that they housed heavy equipment.

Mr. Prager felt that a tower problem could disrupt town services pretty substantially. He asked what would happen if the tower comes down and whether towers ever do come down.

George, Nextel engineer, said that in really severe weather a monopole might come down but chances are it won't and that's why they use that design.

The Chairman asked about the liability issue.

Mr. Lacey said that the Town would have grounds to take action if the tower fell and stressed that liability insurance is required.

Another cell engineer said that typically a 5 million dollar policy is carried.

George, engineer said that the tower crumples like a Coke can, rather than falling like a tree.

The Chairman asked whether the Highway Department Head was okay with the plan.

Mr. Delaney said that his last worry is that the tower falls on a building.

Savos Danos said that he has 4 towers in Littleton and stressed that limited liability is not an issue. He said that the carriers must submit an insurance policy, although he said that he has questions regarding the lease the town has. He asked whether the lease is for the tower itself or for carriers and asked whether the town benefits from each co-leaser.

Mr. Dillon, BOS, said that the town is receiving \$1800/month.

Mr. Danos noted that the town is getting screwed and should be getting \$1500 per carrier.

Mr. Dillon said that as each carrier is added, the rate goes up.

Of note: the second variance is for height of cabinets.

Discussion ensued regarding whether the 55+ housing project slated for down the street would be within 500 ft.

Of note: it is not within 500 ft.

Discussion ensued regarding how the tower will look. An abutter asked for the no tree look. The applicant said that there will be no impact on the observatory and no lights.

The Board felt a site walk is not necessary because they were just in the area.

The Board moved to grant a variance from 500 ft distance and allow building height up to 11 feet to Nextel and Bay Communications.

Mr. Cadle said that a circumstance for hardship would be gap in coverage, as upheld by the federal court.

Mr. Lahey said that what drives location is a gap in coverage and a denial would be a hardship.

Savos Danos noted that that is a good location

The Board moved to close the public hearing. The motion was seconded and passed unanimously.

The motion to grant was seconded and passed unanimously.

The Chairman reconvened the Squannacook Hills 40B and noted that Savos Danos wrote a five page letter into the record and read the JNEI response into the record.

Atty. Deschenes said that no traffic will be discussed tonight. He said that those issues are being worked on from the last meeting and should be on the agenda for the next meeting. He said that the discussion tonight is engineering, parking, trash, school kids, etc. He said that based on a 9/3/04 letter from JNEI, each item has been addressed. He said that they will file a notice of intent with the Con. Comm., will file with the BOH at some point and will file under the National Pollution Discharge System. He said that there were grading questions and the property has been re-graded and designed to change the culdesac. He said that the Fire chief confirms that the new grading satisfies his concerns regarding access to the new buildings. He said that he will get them in writing for the record. He said that the culdesac has been enlarged under the Chief's direction and noted that they added no parking signs along the culdesac. He said that they have agreed to install sprinklers in the buildings and noted that sidewalks and crosswalks have been added, as well as 8 additional visitor spaces. He said that trash will be handled in a dumpster located in a screened enclosure with doors. He said that perc test locations have been added to the plans. He said that the plans are now showing the existing cast iron water main on Townsend Rd. The main seems to have sufficient capacity and he will get this in writing for the ZBA. He said that the Chief is comfortable with the new hydrant locations and noted that the plan accurately depicts the location of neighbors and abutters. He said that they have shown the actual jogs on the units and updated the architectural plans. He then referenced the JNEI letter dated 11/1/04 and said he will leave it to the Board to review the letter. He said that it seems that all issues have been addressed. He said that there was some discussion regarding the site plan by-law and stormwater runoff. He said that they have addressed peak rates and noted that the by-law addressed volume changes as well. He said that they have engineers to address how to mitigate that runoff.

John Schmidt said that it will be a challenge to meet the requirements discussed in #26 of the JNEI report, pages 4 and 5.

Atty. Deschenes said that there will be a sidewalk but no wheelchair ramps.

Mr. Schmidt said that they could stripe it so there is a clearly delineated crosswalk.

Atty. Deschenes said that they will make a bus shelter or waiting area that will be located in a flat area that is setback from the roadway and not in any wetlands.

Mr. Prager asked whether it could affect site distance.

Atty. Deschenes said that they will make sure that it doesn't.

The Chairman said that he wants a description of how no earth removal permit is necessary, as noted in JNEI #8.

Discussion ensued regarding earth removal issues.

Atty. Deschenes said that under 40b, they are not specifically required to apply to individual specific boards. He said that they can only determine specific waiver requests when they know exactly where everything is going. He said that they will submit a specific waiver list and an updated pro forma.

The Chairman asked about how the saving of trees is done and how trees should be identified.

Mr. Prager noted concern regarding the number of visitor parking spaces.

The Chairman asked whether residents will have their own garbage cans or will all walk to the dumpster at the top of the hill.

Discussion ensued regarding trash pick up.

An abutter said that she does not want dumpsters escaping down the hill.

Atty. Deschenes said that he will look at installing another dumpster if the ZBA wants. He said that what they are providing is reasonable and adequate.

Mr. Sommers asked whether a truck would be coming every day for that many units.

Atty. Deschenes said that trash pickup will be handled by the condo association. He said that they don't want trash flying everywhere.

Mr. Schmidt said that one dumpster with one pick up per week is likely to adequate. He suggested having one dumpster behind the school bus stop as an idea.

Mr. Sommers said that he would like to see more trash analysis because 24 units for one dumpster seems like enough. He stressed that he doesn't want daily trash trucks.

Atty. Deschenes said that they will only provide one dumpster unless the ZBA asks for more.

The Chairman thought that one dumpster would be okay except for the hardship for people living at the bottom of hill and needing to climb up to dump garbage at the dumpster located at the top of hill.

An abutter said that kids don't wait at bus stops any more but rather wait in cars with a parent. She said that many cars could be lined up in the driveway.

Discussion ensued regarding road width and whether the road could be wider.

The BOH asked for information as soon as possible, ie what variances the applicant is asking for.

The Chairman read the Savos Danos letter into the record.

Atty. Deschenes said that the response echoes that of JNEI.

Mr. Schmidt said that the project is not in a Zone 2 district.

Savos Danos said that in a Zone 3 district nutrient flow needs to be taken into effect. He said that it will effect the retention basin and then the Squannacook River. He said that there will be alga blooms in standing water and the will have an effect on the Squannacook River.

Mr. Schmidt said that the reviews fall under the State regs. and they base it like any other project. He said that his concerns are BOH and DEP regs., which were not triggered.

Of note: the letter from Savos Danos was sent to the BOH.

Discussion ensued regarding how to address issues outside of certain purviews that affect waterways.

Mr. Prager asked how to determine whether property line levels will affect the river.

Mr. Danaos described how nutrients break out of the water table. He said that sewerage won't break out but there will be a nutrient rich environment. He said that the site is unique because it is directly above the Squannacook River.

Mr. Sommers said that there has been discussion about the detention basin and alga, etc. and asked about mosquitoes.

Mr. Schmidt said that the basin will drain dry in 24 hours.

Discussion ensued regarding how often basin will be flushed.

Mr. Schmidt said that there will be a maintenance plan that will probably require bi-annual flushing.

Dr. Horowitz asked whether the river could become a week problem like Lost Lake.

Mr. Danos said that this is only one site as apposed to the many sites at the Lake.

Mr. Sommer said that nitrates are one thing and asked about other things, such as a too steep hill getting sanded in winter and the sand sliding into the river.

Mr. Schmidt said that it will flow into the detention basin. He suggested a no salt condition.

Atty. Deschenes said that he wants to remind the Board that this should not be treated any differently than any non- 40b project. He said that he wants proof that this project will nutrify the Squannacook River.

Another abutter noted that ducks live in the standing water and asked for less sarcasm from Atty. Deschenes.

Janice Blair, abutter, said that the landscaping has to be kept up and noted concerned regarding chemicals applied to grass, etc.

Discussion ensued regarding how the chemicals, etc. will be monitored.

Mr. Degen said that Atty. Deschenes wants to be held to the same standard as any applicant but noted that under that standard only one house would be built. He said that 24 units should be held to a much higher standard level than a single family home. He asked about the slopes of the retention basin.

Mr. Schmidt said that the slopes are 3-1.

Mr. Degen said that the basin should be railed, particularly by the lower four parking spots to keep people from potentially falling in or driving in. He said that this should also be before the earth removal committee because there was a major erosion problem down the street on Townsend Rd. He noted that the root systems of trees are good stabilizers.

Atty. Deschenes said that there are no trees there now.

Mr. Degen asked for a joint meeting with the earth removal committee.

The Chairman said that that should happen.

An abutter said that he saw a black bear recently and suggested good protection of the trash.

An abutter asked about snow removal.

Ms. Blair asked what will be stored on the leach field.

Discussion ensued regarding snow storage and its potential effect.

Discussion ensued regarding the level of Con. Comm. input.

Mr. Clemens, Con. Comm., wants to hear the under State and Town bylaws. He said that often environmental issues are dealt with later and he said that they should be dealt with up front.

An abutter asked about the location of mailboxes.

Atty. Deschenes said that this is dictated by what the post office requires. He said that he will look into it and provide the answer.

Ms. Blair asked how the CPA could affect the project.

Mr. Sommers noted a parking concern: there are two areas each with 4 spaces and each driveway is single width with a one-car garage. He said that he could see that all visitor parking is taken up by residents and what is to prevent this.

The Chairman said that he doesn't know the answer.

Of note: the next meeting will be traffic and the 12 other issues raised.

Mr. Degen asked about streetlights.

Atty. Deschenes said that there are none proposed but he is not adverse to them.

Mr. Degen said that he is not making a judgment but wants to protect abutting properties from light glare. He said that even building lights should be shielded.

The Chairman suggested considering photometrics for lighting.

Ms. Blair said that she still feels they haven't talked about drainage and underground disturbance.

Atty. Deschenes said that he has submitted a drainage plan that has been reviewed three times.

Mr. Danos said that a nice analysis has been done.

Ms. Blair asked about the impact to abutting houses.

Mr. Danos said that there should be no impact on houses as evidenced by this review.

Mr. Schmidt described drainage, etc. and said that he doesn't see how basements will be affected.

Ms. Blair said that a house was built down the street and flooded her yard.

The Chairman asked how construction on a steep property is contained.

Atty. Deschenes said that this is usually part of the Notice of Intent and Con. Comm. review. He said that he will ask for a phasing plan, etc.

Atty. Bobrowski said that soil erosion has been conditioned in the GG decision.

Mr. Degen felt that a hydrological study could be appropriate.

Mr. Schmidt said that test pits could be done and reiterated that he doesn't see how the project will impact homes to the right or left. He said that they may see a drop in the water table because there is another avenue to exit.

Atty. Bobrowski said that they need to determine when the study should be done but felt it is appropriate.

An abutter said that the whole hill has so much water and noted that any disturbance affects water levels in abutting basements.

Atty. Deschenes said that unless the laws of physics have changed, he wonders how this activity could affect uphill properties. He said that they may see a drop in the water table.

An abutter said that Townsend Rd. is flooded a lot and ices in winter.

Atty. Deschenes said that this is a different point than uphill basements getting flooded. He said that this is legitimate and needs to be addressed.

Mrs. Duffy suggested checking out the 25 yr. flood plan when building that close to the river.

Mr. Danos said that there are many issues of concern but need to concentrate only on the germane. He said that too much is being said outside of the box.

An abutter said that he lives downhill on Windmill Hill Rd. and noted that his basement is constantly being pumped out. He said that they need to study what is underground.

Mr. Sommers said that it is simple physics: the water main moves water used by units into the leaching field. He said that this is adding water to the ground water level and this could affect the

water table, etc.

Mr. Schmidt said that the system has to be designed to specs. He said that they could spit questions out all night but design and construction specs still need to be followed.

An abutter asked about basements.

Atty. Deschenes said that there are no basements, only garages.

The Hearing was continued to 12/1/04 at 7 pm.

The Meeting adjourned at 10:15 pm.