

HAMILTON PLANNING BOARD
MINUTES OF MEETING
August 15, 2017

Members Present: Richard Boroff, Peter Clark, Ed Howard, Rick Mitchell, Bill Olson (Acting Chair), and Claudia Woods

Associate Members: Janel Curry

Others Present: Patrick Reffett,

The meeting was called to order by Bill Olson at 7:00 pm. in the Memorial Room.

Pingree Athletic Facilities Expansion – 537 Highland St. (Continued Site Plan Review).

Conditions that the abutters wanted to see and the school would be willing to accept were discussed. Patrick Reffett said a letter was just received from Tom Catalano, Chris Bow, David Santamena, Carol Catalano, Amy Roberts, and Paul Roberts,

The proposed schedule was discussed with Sunday through Saturday having the parking lot dark by 9:00 pm. and Friday and Sunday dark at 10:00 pm. According to Bill Olson, the Planning Board could only approve a permit until 9:00 pm. Any time past 9:00 pm. would need to go to the Selectmen for approval as the Town By-law stated fields must be dark by 8:30 pm. and all else dark by 9:00 pm. The abutters had asked for fewer than seven nights, but the applicant wanted seven nights even though Jock Burns said the school wouldn't be using lighted fields that late many nights. Mr. Burns described situations such as SAT testing days that would need to have games later as students would be out of the test at 1:00 pm. Mr. Burns said St. John's Prep and Brooks School were 10:00 pm. lights off.

Jock Burns said there would not be many games during the week, but practices instead. There would be three or four events per week. Mr. Burns said football games would be on Saturday or Friday night. The schedule indicated games on Wednesdays of the week, but Mr. Burns didn't want to get locked into Wednesday in case sports were backed up when there might be a need for more. There would be two or three games a week on average, according to Mr. Burns.

Tom Catalano said he thought the presentation showed a much less aggressive schedule. Mr. Catalano said some Saturday games were scheduled to start at 6:00 pm with a 2.5 hour average playing time. Noise was the biggest concern and Mr. Catalano wanted to ensure that young children would be able to go to bed.

Claudia Woods wondered about Pingree being a good community citizens and offering the field to Hamilton and Wenham children on Saturdays. John Amato responded that the schedule had games at 9:00 am. on Saturday and Sunday. Ms. Woods questioned the difference between the

old schedule and the new one, which showed use on Sundays from 5:30 to 9:00 pm. Richard Boroff suggested having the fields used three or four nights a week. Tim Olson asked if Pingree would be willing to accept use four nights a week. Jock Burns said that he was talking about limiting the number of games and not practices. Groups wanted to train, not play games. The games caused noise, traffic and crowds. Mr. Burns agreed with respect to limiting games, but not practices during the week. Mr. Burns wanted use of the fields seven nights a week. There would be no public address system for practices, just athletes staying longer. Use would only be in late fall and early spring.

Tom Catalano said there was a big difference between the school use and commercial use and requested a condition that the school not rent the field out after 8:30 pm. LAX fields were loud whether a practice or game. Tim Olson said he didn't want to compromise Pingree's teams and asked Jock Burns if he would accept a condition to limit use for rental to three to four nights a week. Mr. Burns said he didn't think he should have conditions at all, but Tim Olson recalled that Pingree wanted to be neighborly and that he should compromise out of respect for the abutters. Mr. Burns said he thought he had done quite a bit of compromising.

Jock Burns said the schedule had changed to protect the school's program because time became such an issue. Clubs wanted practice fields, not games. Pingree wanted to attract seventh and eighth grade students, hoping they would apply to the school. Tim Olson noted that the high school was not looking for any time on Sundays. Mr. Burns said the school could live with four days a week for non-school activities, but wanted unlimited use for school activities up until 9:00 pm.

Ed Howard wanted to know who would shut the lights off, to which Jock Burns responded that the lighting would be programmed. Claudia Woods suggested not having lights on Sunday nights, to which Mr. Burns agreed. Peter Gourdeau said having more nights would help with the youth LAX program as it would free up time that Pingree would rent to their program. Mr. Gourdeau said restrictions would not only restrict Pingree but youth programs as well. Peter Clark noted that the high school would have fields. Tom Catalano responded that the applicant was getting added use, not taking anything away from LAX. It was agreed that 6:00 pm. on Sundays was sufficient.

The Board discussed the Landscaping Plan. Claudia Woods asked about an elevation from Highland St. and along Mr. Catalano's property. The applicant had proposed 12' tall trees. Changes to the trail were made after ECTA discussion, which included screening down along the east side to screen the trail and additional pines at the entrance to provide screening from Mr. Doherty's house. The light pole was pulled onto the softball field, which caused changes to the screening. Three trees were being removed with two replacing them. A glimpse of the parking lot may be experienced from Highland St. The applicant wanted to remain flexible with the plantings.

An abutter requested 16' trees. Patrick Reffett said size was important as was the staggering of placement and suggested 16' trees. Tom Catalano requested thuja 'Green Giants' and fencing to mitigate the lighting in the parking lot. The fence should be installed from where the trail started to the end of the parking lot. Mr. Catalano suggested mitigating the impact of the bleachers by putting them into the cut of the existing topography, but the applicant did not agree. The fence would be conditioned and the parking lot would be screened with evergreens. There would be confirmation of a controller, which would be preset to go off at 9:00 pm. with a flash at 8:30 pm.

The applicant moved the 350 person bleachers so voices would travel away from abutters. The 100 person portable seating would be opposite. The greatest use of the portable bleachers would be for a track meet. The two speakers system would encompass the seating area and would be controlled to create a 60 decibel rating at the property line. Tom Catalano agreed with the trail location. It was suggested that the School offer a trail easement, but the school declined. Jock Burns said he was not authorized to do so, but would work with Essex County Trail Association.

Abutters wanted a signage plan for parking. Pingree would develop a parking management plan for large crowds and no parking signs would be provided along Highland St. It was purposeful to have 395' clear in both directions for site lines at the entrance. Police officers had been hired for large events in the past. Tom Catalano requested lighting for the parking lot and walkways be dark sky compliant. Pingree agreed.

Conditions were defined as having event times being Monday through Saturday until 9:00 pm. with unrestricted time for school use within those times and four nights a week for non-school use ending at 9:00 pm. There would be no use Sunday nights after 6:00 pm. The landscape would include taller, 16' to 20' trees (arborvitae 'Green Giant') and a 6' wooden fence at the end of the parking lot. Lighting controls would feature automatic light turn off. A parking management plan would be done on a weekly basis with no parking signs on Highland St. Noise decibel levels would be no more than 60 db at the property line. The parking lot and sidewalks would be light compliant.

Motion made to close the public hearing made by Rick Mitchell.

Seconded by Claudia Woods.

Vote: Unanimous in favor.

Site Plan Review 775 Bay Road. Hamilton Wenham Regional High School Athletic Fields.

The abutters had not been present to comment on the field but they had all been notified. Peter Clark recused himself. Cathy Herbel (Gale Associates) said the proposal was for two multi-purpose athletic fields, lighting, and a new track. Ms. Herbel outlined the schedule for proposed uses, lighting, and field timing. The public address system would be similar to the one used currently. During the fall season, there would be football and soccer. Monday through Friday there would be physical education classes. JV games and practices would be from 3:00 to 5:00 pm, with varsity games and practices from 5:00 to 8:30 pm. The high school would use the

fields on Saturdays 8:00 am. to 2:00 pm. with various youth groups using the fields from 2:00. to 9:00 pm. There would be no lights used on Sundays or during the winter or summer seasons. Springtime usage would be similar to fall. There might be a change due to SAT days or MIAA state tournaments. The public address schedule would be similar to the existing. Monday through Thursday, the public address system would be turned off by 6:30 pm. and on Friday, the system would be turned off at 8:30 pm. On Sundays, the system would be on from 11:00 am until 2:00 pm. There would be no public address system in winter or summer, unless there was a rare tournament. The school would provide a schedule to the Planning Board each August.

The High School Athletic Director said there would not be more noise, it would only be a time shift. The school used two detail officers, which might increase to up to four with the lights. The bleachers would hold 600 seats. Photometric analysis included a need for 50 foot candles required for baseball and 30 for soccer and other sports. LED lighting had not been decided yet. Rick Mitchell was concerned that the photometric plan looked good but real life would cause a need for adjustment and LED was adjustable. It was agreed that there was limited spillage, but an aura would be created. Mr. Mitchell suggested a condition that a photometric analysis be completed to ensure that it conformed with the plan.

There were ten 80' poles with four located at the track field and six at the baseball field. The track was in the buffer zone along with another field. The proposal included the site for restrooms, even though it would be part of a later phase.

Patrick Reffett suggested a predicated decision to what was known. Things unknown, flushed out, or not funded yet would be the subject of a future amendment. The field and drainage were what was known. Phase I would be to provide ADA access from the existing parking, the new track and field, the field inside, the synthetic turf multipurpose field, the synthetic turf baseball field, lighting, and fencing. The applicant was requesting an amendment for the approval of the existing site plan. The applicant needed approval for Phase I. and permission to move forward with the ConsCom to obtain a final permit. The Board wanted to receive a phasing plan and would draft conditions.

Sean Timmons wanted to have the design approved to show donors what would be built. The fields, lights, multipurpose field, ADA, and fencing could be approved. Mr. Timmons wanted to show there was space for bleachers and bathrooms, but would return for those approvals.

Motion to continue made by Rick Mitchell.

Richard Boroff seconded.

Vote: Unanimous in favor.

Peter Clark (recused Planning Board member and abutter) referred to the Longmeadow Study Committee who were discussing the acquisition of the property next to the high school. Mr. Clark asked if the applicant would abandon the turf field and expand to two or three fields in the

adjacent property. Mr. Timmons said the Recreation Committee was in support of the Longmeadow Study, but would be renovating the existing field first. Recommendations were due in October. Allison Jenkins noted that even though Special Town Meeting was in October, Wenham did not have a Fall Town Meeting. Rick Mitchell recalled that Harborlight and the Hamilton Development Corporation requested to have preliminary recommendations for Special Town Meeting.

Peter Clark noted that the middle school parking lot Site Plan Approval was conditioned to have lights turned off or on demand with motion detectors, but the lights were on all day and night, which was a waste of money. This project needed switches in the system.

Cell Tower Special Permit Application – 577 Bay Road. Sign non-approved Special Permit.

Patrick Reffett said a Finding was a specific Board action that was not what the Board needed to be providing. The Board needed to provide a written Decision which was indicative of what the vote was. The Decision was not a denial, but a vote that did not pass based on the lack of a supermajority. The applicant had 10 days from the denial to submit his case to the Federal Court. The Planning Board would now be defendants in a Federal law suit. Mr. Reffett said the Board needed to file the Decision that incorporated Findings. If a Decision was not filed, a constructive approval would be provided.

Claudia Woods read the reasons that three members denied the approval. Members pointed to Brown's Hill as a place that might be appropriate as a cell tower site. The Town issued an RFP for two sites for consideration both of which belonged to the Town. The By-law was plain without regard to ownership that sites must be considered. In an effort to tell the Board, Mr. Reffett provided an email from Marc Johnson who make it clear that the applicants did not get to choose the location for towers, but the members who voted against the project wanted reasons for not looking at the Manchester or Brown's Hill locations. Competition and negotiations were not factors that had a meaning under the By-law. The applicant's representative looked at Town owned sites in the area, but it was clear that only that area was considered. The applicant only searched for areas where there was poor reception. Service from existing towers must be demonstrated by technical evaluation to have coverage significantly poorer than the proposed location, which was not done. Under section 7.2.16 of the By-law, the applicant might have requested a waiver of the requirement but none was made. The applicant ignored the requirement of the application. Regarding the balloon requirement 7.2.5, the applicant flew the balloon for three hours rather than three days.

The proposed tower represented unacceptable visual aspects. While the DPW yard was not in the Historic District, it was viewed from the Historic District. CPC funds had been spent for the preservation of Town Hall. The Historic District Commission had by formal letter expressed concerns that the cell tower would be visible from the Historic District. Section 7.2.8.7 provided that the Planning Board pay particular attention of views from the Historic District. At 109' it

would tower over the picturesque Town Hall and be visible from residences within the Historic District. The visual impact would be experienced from Town Hall. A Citizen's Petition with over 100 signature was part of the public record. If convinced that there were no other locations, than this might be acceptable, but the By-law expected the applicant to establish that no other sites could be used. The applicant failed to show this, according to Claudia Woods, Peter Clark and Ed Howard, who were the nay votes.

Claudia Woods said there were two sites, one sold by John Pirie next to the cemetery and the water reservoir site on Brown's Hill, which should have been considered. Peter Clark recalled that the cemetery property had restrictions, but that there was a parcel that had recently been transferred to the Town without restrictions. This was not discussed at a Board meeting. Ms. Woods thought there were other sites that were worthy of consideration.

Rick Mitchell thought the first paragraph of the letter was wrong. The failure to consider an existing provider tower at the Manchester site had been discussed and the applicant said it would be economically absurd to put another tower within .10 of a mile of the other tower, according to Mr. Mitchell. Peter Clark said there was no technical review by the applicant regarding the site. Mr. Mitchell responded that the applicant would not conduct a technical review within .10 of a mile of another tower. The Federal Communication Act indicated that the applicant needed to find a location with no existing or poor existing service in order to place a tower. Mr. Mitchell said the existing tower was servicing the Chebacco Lake area, but Mr. Clark responded that all existing towers should be evaluated. Mr. Mitchell said the By-law was not the controlling instrument but the Telecommunications Act was. Mr. Mitchell added that no other landowner came forward with land to provide a tower.

Rick Mitchell asked if the Board could constructively approve the Findings by default and Patrick Reffett responded yes. Mr. Reffett said the Board had 20 days from the Decision, which was made 14 days prior. The Decision language prepared was agnostic as dispassionate to the idea of finding other sites but would give the Board something to file, according to Mr. Reffett. Bill Olson said he had a problem with the Findings as it was an opinion of fact while he wanted the Decision to be based on fact. Rick Mitchell noted the comparison to the Asbury Street site, which was not required to look at other sites. Two town meetings identified this location and voted upon the site, the applicant had a site and demonstrated a need, according to Mr. Mitchell. Technical analysis on unavailable sites was not appropriate.

Allison Jenkins said the Selectmen and Varsity Wireless were prepared to go to Federal Court to appeal the Decision. Ms. Jenkins said the technical analysis was subjective. Town Counsel and Varsity Wireless agreed that technical analysis was provided. The Selectmen were not to become involved with private real estate transactions. If Gordon Conwell wanted to move forward to have a tower, the Selectmen were not planning on mediating it. Bill Olson said the options were that the Selectmen pull back the application or the letter would convince a Federal

judge that the applicants had not done a technical analysis of available sites. Mr. Olson did not feel the letter would convince the judge. Patrick Reffett said the applicants looked at 14 sites.

Allison Jenkins said she took a Facebook poll with 190 for the tower versus nine against the cell tower. The Historic District asked the Planning Board not to approve it, but the property was not in their purview. Bill Olson said the technical analysis was subjective. Rick Mitchell said the Selectmen were not going to provide funding for a defense so a default would occur. The Board could vote three to three, in which case it would default.

John Hamilton (Mary Green's representative) spoke against the project and referred to section 10.5.2. of the By-law. In response to Rick Mitchell's comment that the Selectmen would not finance the defense, Mr. Hamilton said there was an ethical decision, based on Chapter 21 of the General By-law, which said the Selectmen shall defend all lawsuits, making the Town obligated to defend the case. Mr. Hamilton said if a Board made a Decision supported by Statute and the Town said they would be defaulted in court, it was blackmail.

Allison Jenkins said the majority of the Planning Board voted in favor of the Special Permit and if the Selectmen gave legal counsel, it would give it to the majority of the Board. Ms. Jenkins said if it went to a Federal Judge, the Selectmen would win. Claudia Woods wondered what the point of having a supermajority would be. Ms. Woods wanted the Findings to go to court. Ms. Jenkins said the Federal Communications Act would supersede the By-law as they could prove a deficiency of coverage. Ed Howard and Ms. Jenkins debated the defensibility of Board members. Patrick Reffett added that when Town Counsel advised members how votes should be based on substance and Board members didn't follow that advice, they would not get legal coverage.

Mary Green said a supermajority requirement was put in there for a reason the same way some votes at Town Meeting required one. By requiring a supermajority and then having the Planning Board not follow its own rules, something would be constructed. Bill Olson disagreed that a Federal Judge would not to agree with the supermajority of Planning Board votes. Bill Olson suggested submitting the letter with the Decision if it could be submitted with only three signatures. Town Counsel had instructed the minority to write the evidence as to why they voted the way they did. Patrick Reffett thought it could be submitted with three votes. John Hamilton would write his position on the matter. Richard Boroff, requested that the footnote be taken off as it was not discussed. If Town Counsel agreed that nay voters should file, then it was the end of the conversation.

Majority to vote upon the minority members' opinion as to why they turned down the findings as part of the special permit made by Rick Mitchell.

Peter Clark seconded.

Vote: 3:3. Town Counsel would determine if the vote did not matter and the nay voters could file their Findings and if applicable, the Findings would be filed.

Board Consideration of other possible Fall Town Meeting Articles. WSOD, EOD and Marijuana Ban

Three hearings were scheduled for September 5, 2017. The cottage housing would be next step to get an analysis of a site. Asbury Grove members said they would like to see that they be in a cottage housing zone. Patrick Reffett said they were one lot. Bill Wilson suggested making the By-law flexible to include Asbury Grove.

Other Board business review and vote minutes.

Patrick Reffett recalled that the Board voted negatively regarding the subdivision of 46 – 48 Meyer Road based on Town Counsel’s opinion, which was being appealed to land court. There would be an action by the court to see if there could be a negotiation or settlement. It that did not prove fruitful, the case would go to land court. Town Counsel would follow up. The applicant’s argument was that there was an existing plan for subdivision down the street and in that plan, their subdivision was drawn, grandfathering them as being a subdivision. The plan did not show access in the manner in which they were contemplating it.

Minutes

Motion to approve the minutes of July 21, 2017 made by Rick Mitchell.

Seconded by Richard Boroff.

Vote Unanimous in favor.

Motion to adjourn made by Ed Howard.

Seconded by .Rick Mitchell.

Vote: Unanimous to adjourn at 10:03 pm.

Prepared by:

Marcie Ricker

Attest Date