Hopkinton Planning Board
Minutes
January 12, 2010

Chairman Bruce Ellsworth opened the Hopkinton Planning Board meeting of Tuesday, January 12, 2010, beginning at 7:00 PM in Hopkinton Town Hall. Members present: Timothy Britain, Michael Wilkey, Celeste Hemingson, Bethann McCarthy, Edwin Taylor and Cettie Connolly. Members absent: James O'Brien and Clarke Kidder.

I. Minutes and Notice of Decision of December 8, 2009.

Review of the Minutes and Notice of Decision was deferred to the February 16, 2010 meeting.

II. Conceptual Consultation(s).

Chairman Ellsworth addressed the Board advising that he had recently attended a meeting with Dr. Richard Rosen of Diagnostics Incorporated, Attorney Peter Imse of Sulloway, Hollis & Soden, Economic Development Chairman Glenn Ohlund and Board of Selectmen Chairman Tom Congoran. The purpose of the meeting was to discuss a proposal to operate a greenhouse and co-generation facility at the Bio Energy property in West Hopkinton. Mr. Rosen is before the Planning Board to briefly provide an overview of what his company is considering.

Dr. Rosen addressed the Board explaining his proposal is to construct greenhouses and a new cogeneration facility that would be fueled by woodchips. The process will involve the recovery of CO2 to be used in the greenhouses for plant growth and to employ the heat from the co-generation facility to heat the greenhouses. The greenhouses will be used to grow organic fruits, vegetables and plants. The project will employ approximately 200 people. There would be no environmental issues associated with the facility as the proposal includes the use of beneficial insects to control pests and the water as a result of irrigation will be recycled. Additionally, they will utilize an ash recovery system in an effort to utilize the ash in the greenhouse operation.

Mrs. Bradstreet questioned the size of the new facility. Dr. Rosen stated that the cogeneration facility will produce between 25 and 35 megawatts. The footprint of the facility would not be much different than the current facility.

Mrs. Hemingson questioned who would own the property. In response, Dr. Rosen stated that his company would acquire the Bio Energy properties. The greenhouses will consist of approximately 20-acres and will be a sustainable green operation with an existing commitment to buy all of products. All chips used at the facility will be from virgin wood.

Mrs. Hemingson then questioned whether there was another facility similar to that being proposed. Dr. Rosen replied no, stating that there are many greenhouse facilities that utilize the waste heat from cogeneration facilities to heat the greenhouses; however, there is no known facility that utilizes the CO2 in growing the products.

Dr. Rosen suggested that anyone having questions could contact him at his office by calling (617) 484-3755. The Board thanked Dr. Rosen for his time.

III. Application(s).

#2009-13 New Cingular Wireless PCS, LLC on behalf of AT & T Mobility, Inc. – Jonathan McNeal of SAI Communication addressed the Board to request Site Plan Review and a modification of Conditional Use Permit pursuant to Section 3.10 (Personal Wireless Service Facilities) of the Hopkinton Zoning Ordinance. Applicant proposes to replace three (3) existing antennae with six (6) antennae on array, existing from the frame of the tower, and the installation of an additional 5' x 7' concrete pad at the base of the tower to accommodate additional radio equipment. The existing three-carrier, 90 foot telecommunications tower was approved by the Planning Board on April 15, 2003. The mono-pine is owned by Eastern Properties; however, the property is owned by Thomas Komisarek and is located at 67 Farrington Corner Road in the R-3 district, Tax Map 257, Lot 12. This is a continuation of the November 10, 2009 hearing.

Mr. McNeal provided a brief overview of the project, explaining that AT & T propose to replace the existing three (3) antennae with six (6) antennae at the 87-foot level of the existing tower. The purpose of the replacement is to provide additional service to their customers. At the November meeting, the Board had asked about reducing the distance of the proposed antennae will be from the monopine. In response, Mr. McNeal provided revised plans showing a reduction in the proposed distance. Also provided was a photo simulation of the proposed antennae on the existing monopine, which also depicts the areas with missing branches. Lastly, as requested a structural analysis had been provided to the Board indicating that the monopine can support the additional antennae.

Chairman Ellsworth inquired about the status of replacing the missing branches. In response, Mr. McNeal noted that his company has reached out to the owner of the monopine; however, they have not received a positive response.

Briefly, the Board discussed their alternatives in reviewing the application given the fact that the monopine, in its current state, violates the Board's approved design. Condition four of the Board's April 15, 2003 decision specifically requires the Applicant to maintain the camouflaging techniques of the monopine, so to reduce the aesthetic impact of the facility. Brief discussion ensued as to the Planning Board's lack of authority to require the Applicant to make changes to the facility. The responsibility is that of the tower owner.

Mrs. Bradstreet, along with other members, noted that the tower was not designed as was originally approved. The placement of the branches is so that they extend almost at the same length from top to bottom of the tower, which is not what the Board had requested or approved in 2003. While the Board agreed that the configuration is not as was approved, the Board believed that the issue should have been brought to the owner's attention in 2003. The issue that remains to be addressed today is the missing branches that have fallen off the monopine.

Chairman Ellsworth asked Selectman Congoran, who was in the audience, whether it would be possible for the Selectmen to meet with the tower owner, prior to the Planning Board's next scheduled meeting, so to address the issue with the missing branches. Mr. Congoran replied yes, indicating that the Selectmen meet next week and would be able to discuss the matter with the owner. In the meantime, Mr. McNeal agreed to grant the Planning Board an extension of time to act on his application.

Mrs. Bradstreet, seconded by Mrs. Hemingson, moved to continue application #2009-13 to the February hearing, so to allow the Selectmen an opportunity to address the issue of the camouflaging (missing branches) of the monopine. Motion carried unanimously.

III. Zoning Amendments– Public Hearing

Chairman Ellsworth announced that this is the first of two public hearings that will be held in considering the following proposed amendments to the Zoning Ordinance:

- **Section XV, 15.8.3 Variances.** The amendment would replace the criteria required to demonstrate an "unnecessary hardship" with the new statutory definition RSA 674:33, I (b), effective January 1, 2010. The criteria would read as follows:

  5) *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

     (A) *For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:*

        (i) *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*
        (ii) *The proposed use is a reasonable one.*

     (B) *If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

  The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply when the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

  The following criteria will be omitted and replaced with the new criteria shown above:

  ~~*5) Special conditions exist such that literal enforcement of the Ordinance results in unnecessary hardship.*~~

  ~~*Use Variance:*~~

  ~~*(a) The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment.*~~
  ~~*(b) No fair and substantial relationship exists between the general purpose of the Zoning Ordinance and the specific restrictions on the property.*~~
  ~~*(c) The variance would not injure the public or private rights of others.*~~

  ~~*Area Variance:*~~

  ~~*(a) An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.*~~

~~(b) The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.~~

Jane Schoch addressed the Board stating that issues involving variances are very controversial. Mrs. Schoch had reviewed the Zoning Ordinance requesting that he Board consider changing the wording in the Ordinance with respect to decisions of the Board of Adjustment being based on evidence presented, rather than allegations contained in applications.

Brief discussed ensued with members questioning why the statement was even in the Ordinance. It was suggested that most of the information contained in any application could be considered allegations; however, boards are to take into consideration not only the information submitted at a hearing, but also the information contained in applications. The Board unanimously agreed to omit the sentence. The paragraph would now read as follows:

> *15.8.3 Variances: The Board of Adjustment shall hear and decide requests to vary the terms of this Ordinance. At the hearing on the application, the applicant shall present testimony and other evidence to establish that all five conditions for a variance have been met. ~~The decision of the Board shall be based on the evidence presented at the hearing, not on allegations contained in the application.~~ Testimony shall be allowed in accordance with the provisions of 15.7.2 of this Section.*

- **Section XVII, Floodplain Development Ordinance.** The amendment would update the effective date of the Flood Insurance Study and Flood Insurance Rate Maps with an effective date of April 19, 2010, as required by the Federal Emergency Management Agency.

  Mr. Wilkey noted that the amendment should also include reference to the Merrimack County Map. Mrs. Robertson will make the necessary revisions for the January 26th public hearing.

  There was no public comment.

- **Section VII, Signs** (see attached comparison of the current and proposed Sign Ordinance)**.** Mrs. Robertson provided the Planning Board with brief overview of the process by which the Sign Committee developed the proposed new Sign Ordinance. Members of the Committee included representation from the Economic Development Committee, Board of Selectmen, Planning Board, and a business owner. Following numerous meetings and review of a number of ordinances of other communities, including those of other states, the Committee proposed a repeal of the current Sign Ordinance replacing it with a new Ordinance entitled the same. The new Ordinance is intended to address concerns raised by the Board of Selectmen and business owners with respect to the lack of allowable signage in the downtown. Specifically, the Ordinance addresses the following:

  - Method of computation for determining the total area and height of a sign;
  - Signs for construction sites;
  - Political signs;
  - Building markers/historic signs;
  - Banners advertising “open” or “sale” messages;

- Signs painted on buildings;
- Sign setbacks;
- Signs on roofs;
- Projecting signs;
- Signs attached to or painted on vehicles parked and visible from a street;
- Electronic message center signs;
- Residential development identification signs;
- Window signs;
- Portable signs;
- Temporary signs, and
- Signs for multiple businesses located on the same property.

Mrs. Robertson reviewed each of the above, explaining whether the signs were currently permitted or what benefit the change would be to the businesses in the downtown.

Mary Congoran addressed the Board noting that consideration had not been given to directional signs advertising the businesses located off Burnham Intervale Road. She suggested that, for example, Calico Hen and Tooky Greenhouse have a difficult time drawing customers to their businesses due to their location at the end of Burnham Intervale Road. Mrs. Congoran suggested that consideration be given to allowing off-premises signs in the downtown (end of Pine Street) that would advertise those businesses along Burnham Intervale Road.

In response, Mrs. Robertson noted that the current Ordinance allows for agricultural businesses, such as Tooky Greenhouse, to have off-premises signs for a limited number of days per year. Ted Milbury, owner of Tooky Greenhouse, said that he was not aware that he was allowed to have off-premises signs.

Tom Congoran addressed the Board suggesting that in an effort to support the businesses off premises signs should be considered as being permitted. Mr. Congoran then suggested that the Town could put up a post in the downtown that would allow for limited signage for those businesses off Burnham Intervale.

Tim Bassett addressed the Board questioning restrictions, if any, that would affect his ability to advertise his produce from Gould Hill Orchard. Mrs. Robertson noted that the Ordinance as proposed is intended to be more business friendly; if anything, it is intended to be less restrictive. She suggested that the proposed Ordinance allows for one 20-square foot sign for a principal, non-residential use; however, there were no provisions included for off-premises signs.

George Langwasser addressed the Board in support of the changes proposed; however, Mr. Langwasser suggested that off-premise signs should only be allowed if they are legally permitted in the Ordinance. Lastly, he said that he would not object to the Town providing the post for an off-premises sign, but would not support the Town paying for the individual business signs. He questioned who would be responsible for maintenance and who would decide which business is able to advertise on the sign.

Erick Leadbeater addressed the Board suggesting that they consider developing a master plan for signs that would take into consideration traffic patterns and the needs of the businesses. Mr. Leadbeater referred to other towns which have similar plans in place. He

offered his assistance in taking photographs of directional signs found in other towns that have a Master Signage Plan.

Chairman Ellsworth stated that while the Board has heard the comments and concerns raised with respect to off-premises and directional signage, the issue before the Board is the proposed Ordinance that has been developed by the Sign Committee. The Planning Board needs to decide whether to move the Ordinance forward, amend the Ordinance as proposed, or not move the Ordinance forward to the voters.

Mr. Taylor explained his experience with the type of Master Signage Plan that Mr. Leadbeater had referenced. The Plan generally provides locations for directional signage based on traffic patterns. Additionally, the design of the signs is consistent throughout the community.

Following discussed a majority of the Board agreed to move forward and review the Sign Ordinance as proposed by the Sign Committee.

Shortly after the Planning Board began reviewing the proposed Ordinance section by section, the Board determined that additional time was needed for them to thoroughly review the proposal. For example, there was a suggestion that a definition section should be included so to clarify some of the terms in the Ordinance. Therefore, the Planning Board unanimously agreed to post-pone any action with respect to the proposed Ordinance until March 2011. The Board asked that the Sign Committee continue its work updating the Sign Ordinance.

The final public hearing for review of proposed zoning amendments is scheduled for Tuesday, January 26, 2010, at 7:00 PM, Town Hall.

IV. Adjournment.

With no other business to come before the Board, Chairman Ellsworth declared the meeting adjourned at 10:05 PM. The next regular scheduled meeting of the Planning Board is Tuesday, February 16, 2010, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning Director

In accordance with RSA 677:15, any person(s) aggrieved by any decision of the Board concerning application(s) may present to the Superior Court a petition, duly verified, setting forth that such a decision is illegal or unreasonable in whole or part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within thirty (30) days after the Board's final decision regarding the application in question has been filed and becomes available for public inspection in the Planning Office.