

Town of Milton Planning Board August 11, 2010

Attendance: Leal (Chair), Frolish, Staulters, Zlotnick, Lacey, Whittel, Woolbright, Scatena (Alternate), Pozefsky (Attorney), Howe (Zoning official), Blaisdell (Town Board Liaison), Robinson (Town engineer), Talmadge (Secretary).

The meeting began at 7:00 PM with the Pledge to the Flag.

The minutes of July 14, 2010 were corrected as follows:

Pg4 – 2nd line – red at night white at day, Pg5 Ray Ingles – line 3 do not make mistakes, Pg6 – 6th line – navigation change to aviation, correct Whittel name.

Whittel motioned to approve the minutes as corrected, Staulters seconded, all members voted in favor.

Public hearing David Norton minor subdivision 3509 Galway Road

David Norton reintroduced his application for a minor two lot subdivision.

Pozefsky noted the deed language is acceptable.

The public hearing was opened.

There were no public comments. Everyone had an opportunity to speak. The public hearing was closed.

Zlotnick motioned a negative SEQR, Lacey seconded, all members voted in favor.

It was noted the Single Lot Exemption note is on the survey map.

Whittel made a motion to approve the subdivision map dated June 30, 2010. Lacey made a second. All members voted in favor.

Split Rail Farm – Bolt – Route 29 public hearing minor subdivision

Richard Nimmo reintroduced the application indicating the subdivision has been reduced from four lots to two lots – one with the existing home and remaining acreage and the other with the existing Winery building with two acres taking advantage of the single lot exemption.

Staulters indicated the old fire truck has to be removed or be licensed.

Howe reminded the planning board looked at the fire truck in the site plan as a feature of the property.

Staulters indicated if the fire truck stayed then it would be spot zoning.

Nimmo explained the fire truck is part of the property but if it has to be removed he would do it. Also all of his labels include the fire truck as it is part of the winery.

After discussion the board agreed it is an enforcement issue and Howe will follow up on it - Howe indicated that there are no violations on the property at this time.

Zlotnick motioned for a negative SEQR, Woolbright made a second, all members voted in favor.

The public hearing was opened.

Tony Zanella of Stone Church Road objected to the subdivision citing he is worried about digging.

Tom Boghosian of Middle Line Road commented about zoning enforcement and believes there is inadequate site distance on the site plan that was approved for the winery.

Bruce Boghosian of Jockey Street commented he agrees with Staulters about the fire truck.

Nimmo responded to comments:

The fire truck could go, the site plan was approved by the board, there is no digging, want the winery building on its own parcel due to the cost put into it and the need to finance, have always followed town rules.

There were no other comments. Everyone had an opportunity to speak. Public hearing was closed.

Leal indicated the subdivision has nothing to do with creating new building lots – everything is pre-existing.

Howe stated there are no existing violations on this property.

Whittel motioned to approve the subdivision dated 7/28/10 with conditions:

1. Fire truck as to proper sighting.
2. Note on map if future building on the site the planning board needs to review.

Woolbright seconded.

Frolish asked for discussion indicating if Mr. Bolt wanted to build a house he would not need to come to the board and asked where is the board's right to ask him to come back?

Pozefsky advised if the board believes water and sewer needs to be looked at then the board could ask for reasonable restrictions.

Discussion ensued in regards to the subdivision regulations that are currently in place.

The motion was amended by Whittel to remove condition No. 2.

Scatena indicated he did not believe No. 1 should be part of the subdivision as it is a town code enforcement issue – do not think the board should mix a junk car into the subdivision approval.

Whittel explained he would like to keep it in there because the original site plan approval included the fire truck.

Woolbright seconded.

All members voted in favor with the exception of Staulters who voted against the motion.

Review Clark subdivision at 1289 Armer Road

Mr. Clark indicated he is requesting a two lot minor subdivision. Lot No. 2 has the existing home. There are no wetlands. Setbacks comply. Constrained land is shown. The septic is in the front of the existing home.

Robinson gave explanation of the requirements for grading and separation distance of well and septic.

Howe indicated at the time of the building permit an engineered designed system is required and the lay-out of the well and septic is addressed at that time.

Howe indicated that the setback for the garage on lot No. 2 is preexisting and no variance is required.

Whittel inquired if the applicant needs to contact the highway superintendent for curb cut permit.

Leal indicated the board could make it a condition or with the building permit.

Public hearing was scheduled for September 8, 2010 at 7:05 PM.

Public hearing SBA Lighting request on Sodeman Road

Leal indicated that Mr. Scatena had stepped into Mr. Frolish's place on the board as alternate.

Chris Fischer, attorney for Cuddy and Feder reintroduced the application indicating they had addressed the following items based upon board review and public comments:

1. FAA has been consulted.
2. Mr. Alexander stated in writing a light is required.
3. The details for the light shield have been provided for board review and the shield has been installed on the tower.
4. Public comments have been addressed in writing.
5. AT&T is on the tower – they submitted a report independently with details about site and coverage – over 9,000 people are in the service area – (documents in file).
6. The height was lowered and certified to be less than 150 feet.
7. Disagree with council for the neighbors that it is not a legal requirement.

Leal indicated he had several items that came in.

1. AT&T responses to SBA questions.
2. McNamee Lochner Titus & Williams 8/9/10.
3. Cuddy & Feder rebuttal to 8/9/10 letter dated 8/10/10.
4. FAA determination.
5. Certification of height.

6. Consultant letter 8/6 & 8/10/10.
7. A written public comment from Andrea Masters.

Leal opened the public hearing with a reminder about the rules.

Lorraine Sherman asked what height was allowed on the original approval was and if approval specified no light at that time.

Ray Ingles of Sodeman Rd thanked the board and explained he had built under the light with the understanding there would be no light. He feels the board has tried to pacify the people. His daughter has put up new drapery to try to mitigate the lighting situation. The legal representative of SBA said no light. Have committed to our children to live in rural area, the board made commitment in good faith to have no light, believe if SBA had put it in writing to FAA and FCC that no light was approved the tower would not have been built. If the light has to be on, would like to sit down with SBA and the town representatives to see how to work this out. The light is obtrusive and offensive. Shielding helped a little. The shields are straight out and if they were to be angled upward then the airplanes would still be able to see the light. Would like to sit down to work out a solution – the tower is needed and will only get bigger with more providers – they have a vested interest and so do the people.

Rick Sherman of Middle Line Road agreed with Ingles – they have a dual lighting system on the tower prior to approval – they can paint the tower and have a low intensity system. The board should look at the whole scheme. Would like facts.

Tom Boghosian of Middle Line Road – indicated the light was working on Tues and Wed- Referred to revocation of Special Use Permit – a substantial failure to comply – revoke the site plan. RPZ aviation easement is needed under a height of 150 feet. Mr. Boghosian explained the visual and instrument approach to the runway - marking and lighting is a requirement. The original approval should stand.

Leal indicated that some things said by the public are not correct – the board are not FAA experts and have paid experts to evaluate this – Ken Patterson letter of 7/14/10 was read to the public (attached).

Leal indicated the letter from Mr. Boghosian and neighbors was shared with the consultant and he responded (attached).

Leal indicated the board has done their homework on the lighting and asked if there are additional public comments that the board has not heard.

Ben Sherman of Middle Line Road indicated he has looked at FAA and FCC regulations and they are aware of markings and lighting. SBA was aware in 2005 and the town was not made aware – it was not made clear – the board could vote to decide to paint the tower instead of the dual light.

Leal stated he brought it up last month and asked what was preferable to the people – dual lighting or markings and lighting and they didn't like the question.

Kurt Stancliff of Middle Line Road indicated he believes the tower is operating without a compliance certificate.

Michelle King of Sodeman Rd suggested there are other locations on the Munter property that are less obtrusive, believe it was a material misrepresentation of facts when that one statement got them a tower - it was intentional and misleading of everyone.

John Munter of Sodeman Road spoke at length explaining he supports his neighbors and understands their annoyance however, he believed this location for the tower was the best place. He agreed with comments and would like to ask his neighbors to make sure that emotions are not in play – look at the safety and the development of the community, new people want cell service.

Munter asked if the red light is OK as for two nights it has been on and he personally did not notice it, also, have been told that AT&T is needed. Suggest the board review the analysis and made a decision.

Sara Gaba of Sodeman Rd agrees with neighbors – the light shield does not do what it is supposed to do.

Bruce Boghosian of Jockey Street asked about the FOIL process because the applicant had a ready response to his own attorney's submission.

Boghosian indicated the airport is visual – ask the board to apply the law, there is a violation and the application cannot be approved, deny the application, remove the light - paint the tower and have a solid red light – refer to advisory circular of 8/1/2000.

Rick Sherman of Middle Line Rd asked if there were a height that would require no light.

Leal explained that based upon the documentation he has read the answer is no.

Tom Boghosian of Middle Line Rd spoke again.

There were no new comments or information presented. Everyone had an opportunity to speak. The public hearing was closed.

Mr. Fischer addressed the board in response to public comment and asked them to take emotion out of the decision and to adhere to law. Mr. Fischer thanked Mr. Ingle for his gracious comments and indicated he would meet with him and SBA and work out a solution for his circumstances.

Fischer indicated he does not believe that SBA blames the board for this situation. FAA lighting and marking was in the 2007 documents - whether the comment was actually from him or from Mr. Padulo, clearly it was in conflict with the documents filed with the town regarding no lighting.

Fischer stated his ethics are in question and he did not know in 2008 of the requirement and as a councilor, he would have corrected the record at that time – he wishes he knew and did not intend to transmit the wrong information.

Fischer explained when he discovered this he investigated how it happened and found the document – he cannot undo it and is not held accountable to him, all of us would have wanted to talk about a light then if known.

The light is on and the light is for human safety. The dual light is on the tower – have asked for final FAA ruling – SBA is willing to paint it and have a steady light if approved by FAA.

Fischer asked for the options to be identified – either the tower configuration as it is now or marked with red lighting.

In response to the FOIL question, Fischer stated his office had requested any correspondence prior to the meeting.

Fischer clarified that Jason Laskey had spoken to Mr. Sherman and the board may play the tape if it their desire – he is sure Mr. Sherman was given the correct information.

Mr. Fischer explained the light is not popular and is adhering to Federal law. His client is concerned there is no lighting for airport safety and is requesting to turn the light on with the medium dual system until a decision is made due to safety concerns.

Zlotnick asked for further explanation of the shielding.

Fischer referred to photos submitted and agreed that if changes to the lighting were made the shielding could be changed appropriately.

Scatena indicated that Route 29 phone service is a necessity and maybe a life saver – he feels bad for the people – he had spoken to a pilot and has been told that the airport is not only visual and instruments are also utilized.

Woolbright indicated he has looked at the lights and does not blame the people for being upset, however he cannot find a way to not have any lights. The experts say lights are needed, FAA letter requires lights. Do not know about the mistakes made, have searched the WEB on SBA and do not think this is a pattern of behavior, do not think they deceived the board, do not like the situation we are in.

Lacey asked about lightning.

Fischer indicated the tower has a built in lightning protection.

Whittel asked if SBA had a preference.

Fischer indicated they have a preference for what has been installed, but would do what the board wants.

Pozefsky advised legal research has been done and there is written advice. Regarding the violation of height and the light – the tower has been reduced to 150 ft. – There are grave concerns regarding the original conditions – if FAA requires lighting then it supersedes town code. The original FAA and

everything since says the light is required now and was required then – have doubts the original condition was valid.

The red light was discussed.

Leal indicated the red light at night is a requirement.

Woolbright indicated that based upon public comment the red light at night with paint seems to be the preferred option due to the opposition to the strobe white light. If there is no white light on the tower then it cannot be turned on.

Scatena agreed markings and red light seem to be the preference but the letter of 8/10 prefers dual lighting.

Leal added that in the latter part of the letter he tells you that it could be marked and lit or just lit.

Leal indicated he would echo Larry and has been to the houses – the board cares about this issue and are trying to do the right thing. Originally thought SBA had tried to pull one over on the board but after research do not think so. Do not see the rationale of lying about the light. The board needs to apply the law and its clear our code says no lighting except as required by FAA. The documents show this is required. To not allow the light is to ignore the law. Revoking the special permit – our attorney believes it might not be a valid condition – the board represents everybody in the town. After hearing the public, mitigation seems that painting is the preferred option. Have asked the engineer to look at mitigation. There is some new LED lighting that is not so obtrusive – the board could ask SBA to look at the LED lighting.

Whittel made a motion for the planning board to amend the site plan approval of 5/28/08 and lighting condition No. 3 of 5/28/08 originally granted to Optasite to allow artificial lighting and /or markings to the SBA cell tower pursuant to code section 180-39.1G(B), because artificial lighting to assure human safety and/or markings are required by the FAA according to the following:

1. FAA determinations dated 19 April, 2007, Feb 2, 2010, and August 11, 2010.
2. Emails from Katie Venticinque to Clinton Papenfuss dated June 24, 2010 and Robert Alexander to Clinton Papenfuss dated July 16, 2010.
3. Reports of Ken Patterson dated July 7, 2010, August 6, 2010 and August 10, 2010.
4. Report of Clinton Papenfuss dated October 8, 2008.
5. Part 3 evaluation of importance of impacts, Full EAF dated June 15, 2010 updated by Clough Harbour and Associates on June 28, 2010.

Approval conditioned upon the following:

1. Height of cell tower and all appendages including the light shall not exceed 150 ft AGL as shown on as-built drawings filed with the town.

2. The light shall be shielded with a tower shade deflector installed to attempt to minimize light towards the ground to extent allowed by FAA, and update final maps and as-built drawings, either on the medium dual or red light case.
3. SBA to advise the FAA as to its preference for daytime markings and night low intensity steady red light or medium dual lighting system, which is steady red at night and whit strobe light during the day with no daytime markings.
4. SBA to mark the tower with orange and white paint for daytime markings and a low intensity steady red light and to advise the FAA of the tower makings.
5. Obtain FAA approval of markings and lighting system.
6. SBA cooperation to utilize new LED technology with the planning board.
7. Use of medium dual light system for a period of 60 days – to allow for new markings and red light install.
8. Fischer agreed that SBA would meet with Leal to discuss the new technology for LED lighting.

Leal stated he would reach out to Mr. Ingles and will look at maximum shielding.

Robinson stated that Ken Patterson was very concerned that the light should be on.

Fischer additionally agreed to the following:

9. Put the light on.
10. Meet with the planning Chairman as discussed.
11. RE-apply to FAA for markings and red light.
12. Expeditious installation.
13. Fischer asked for at least 60 days to resolve with FAA and find the right light.

Scatena made a second to the motion.

All members voted in favor.

Note: Patterson letters attached.

There was no other business. The meeting was adjourned.

