

**TOWN OF JAFFREY**  
**Jaffrey, New Hampshire**  
**PLANNING BOARD**  
**Meeting Minutes**  
**November 10, 2009**

**Present:** Chairman Merrell, Members Deschenes, Doane, Foley, Grodin, Kresge, McCarthy, Moore and Selectmen's Representative MacIsaac

**Absent:**

**Staff:** Recording Secretary Lemire, Building Inspector Baron

**MEETING MINUTES APPROVAL**

On a motion by MacIsaac, seconded by McCarthy, the October 13, 2009 minutes were approved as submitted. (7-0)

On a motion by MacIsaac, seconded by Doane, the October 27, 2009 minutes were approved as submitted. (6-0)

**PRELIMINARY HEARING**

Jim O'Neil – Superintendent of Schools (Stratton Rd. property)

Mr. O'Neil was before the board to bring them up-to-date on what is happening with the property they recently purchased at 37 Stratton Rd.

The house and barn is scheduled for demolition tomorrow. The site plan committee continues to meet and have had meetings with both the Fire and Police Chief to discuss traffic flow and police issues. A meeting has also been scheduled with the bus company. Work is still being done on the master site plan and the hope is to have it near completion in the next month or so. Once it is complete a copy will be given to the board.

Selectmen's Representative MacIsaac asked about a through traffic plan. Mr. O'Neil stated that Fire Chief Chamberlain would like to have a fire access lane around the entire building. That along with several other options will be looked at. The biggest issue is the traffic pattern. At this point they are looking at a short term plan. A long term plan is down the road and would include such things as a fire lane.

Chairman Merrell asked if the abutters were informed. Mr. O'Neil stated that letters have been sent to all abutters. One abutter expressed concerned about having enough green space between the residential properties and the Stratton Rd. property. The abutter is presently out of town but a meeting to discuss this will be scheduled.

Member Doane asked if the property would have any affect on wetlands that flow into the well. Mr. Kevan stated that all water drains from the property onto Stratton Rd. It would have no affect on wetlands.

Mr. O'Neil encouraged the board to contact him with any questions.

Mike Shea / Jeff Kevan – TF Moran (proposed sub-division Ingalls Rd.)

Mr. Shea recently purchased two properties totaling 115 acres of land with 5,000 feet of road frontage on Ingalls Rd. / Red Gate Rd. The majority of road frontage is on Ingalls Rd., a class V road however two of the lots would front Red Gate Rd, a class VI road. The initial intent is to sell the farm house with three or five acres but that cannot be done without a subdivision. Mr. Shea did not want to subdivide

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incrementally because of the safe guards in place that say you can only do that every three years.

Mr. Shea is not trying to maximize yield on the property and is therefore proposing a 14 lot conventional subdivision versus an open space development. There will be no new road construction and the lots would range in size from 5 to 26 acres with at least 200 feet of frontage per lot. Both properties are in the rural without town water district.

Member Grodin asked Mr. Shea how he planned to subdivide lots on a class VI road. Mr. Shea stated that he would have to approach the Selectmen. Mr. Kevan added that he realizes it is an issue to be addressed before they come back to the board.

Mr. Kevan displayed a map indicating slopes and wetlands based on SDS soils maps. A wetland mapping has not been done yet but a Wetlands Scientist will walk the property and identify any wetlands and a boundary survey / subdivision will be done. The lots will be 5 acres or greater which eliminates the need for state subdivision approval and a conditional use permit will be needed to do a traditional subdivision. They are not trying to maximize the number of lots as would be with an OSDP and they are trying to preserve some of the natural features. The question asked of the board is do they feel that a conventional subdivision is reasonable in the configuration presented.

Member Grodin commented that of the two choices he feels the conventional subdivision is the better choice.

Chairman Merrell asked for the grade in that section of Red Gate Road. Mr. Kevan estimated 5 or 6%. Mr. Shea added that he has improved a lot of the road and the stone culvert has been extended.

Member Doane asked if there would be deed restrictions on future owners subdividing. Mr. Shea replied that there would be restrictions. There are also stone walls that he would want preserved and without cuts.

Because the property abuts Rindge Mr. Shea asked the board if they felt this project was one of regional impact. He does not believe it is. Member Grodin would like time to consider the question.

The board agreed to make a site visit and it was scheduled for Tuesday, November 17 at 3:00. The board will meet at the farm house.

**CALL TO ORDER**

Chairman Merrell called the public hearing to order at 7:30 p.m. The rules of procedure were read aloud. Notice of hearing PB 09-12 was posted in the Town Office building, the Library; copies were sent to the Planning Board, the Conservation Commission, and the Board of Selectmen.

**APPLICATION ACCEPTANCE**

1. PB 09-12; West Rindge Builders (property of Zilkha Biomass), 143 Old Sharon Rd., Map 255/ Lot 7, Zone: Industrial

Site Plan – The applicant proposes to amend a previously approved site plan.

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On a motion by McCarthy, seconded by Grodin the board accepted the application to amend a previously approved site plan. (7-0)

**PUBLIC HEARING – NEW**

1. PB 09-12; West Rindge Builders (property of Zilkha Biomass), 143 Old Sharon Rd., Map 255/ Lot 7, Zone: Industrial

Site Plan – The applicant proposes to amend a previously approved site plan.

Presentation: Bill Harper – West Rindge Builders

Appearance: Jeff Kevan – TF Moran

Mr. Harper informed the board that previously there was a company involved with doing all the engineering for Zilkha however they are no longer employed by Zilkha and they held on to some of the documentation that was prepared for Chief Chamberlain's final report. B E and K has now taken over the engineering and designed the addition. The purpose of the addition is the on-going prototype of this plant. A different turbine will be installed and it will require more space.

The addition will be four feet lower than the existing building therefore there will be no concern for height. The propane tanks were installed and even with the addition they are within code. However, the Fire Chief would like to have access around so the gravel bank will be removed and setback allowing him to drive on both sides of the tanks.

Member Grodin asked if the plan showed the bank being removed. Mr. Harper explained that during the initial conversations with Dave Baron and Chief Chamberlain the plan was to move the propane tanks – relocate the pad and lengthen the propane lines. Chief Chamberlain rethought the plan and suggested moving the bank to allow access around the tanks on all sides. Mr. Harper stated that either plan will be done to give the Chief the required distance that he wants.

Chairman Merrell pointed out that the tanks are not shown on the plan. Mr. Kevan stated that they will be added and the decision for the tanks/bank will be added and noted on the plan as a condition of approval.

Chairman Merrell asked how much gravel would have to be removed if they decide to remove the bank. Mr. Harper pointed out that they would need a 25 foot space and there is currently zero.

Inspector Baron reminded the board that the gravel is being removed with the understanding that there will be a building there. It is not a gravel bank.

Mr. Kevan stated that what the plan shows is the existing building and where it will be "kicked out" in order to get the drive around. A little bit of pavement will also be added. As a condition the location of the propane tanks will be added and revised plans will be submitted.

In an effort to ensure all issues are addressed Inspector Baron suggested noting in the minutes the removal of the gravel, the sediment bed that is no longer working and the road that is muddy. Mr. Harper did not have a problem with the suggestion. Mr. Baron added that if this needs Steve Walker's help he will speak with him.

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Mr. Harper explained that a change has taken place in the yard. They have gone to round wood so logging trucks come in with the wood which is then chipped making room for more round wood. It is tough to get in there and the road situation has been talked about many times without resolve to the access. Most people going to Zilkha follow the paved road that travels behind the building.

Chairman Merrell stated that he would like to see a better depiction of the drainage flow on the plan. He would like to see where it goes.

Mr. Harper stated that a lot of work on Chief Chamberlain's list has already been done. Chairman Merrell asked what remained to be done. Mr. Harper stated they would need third party review following the completion of the addition.

Member Doane asked if a bond should be posted. Mr. Kevan stated that the Certificate of Occupancy will not be issued until all conditions have been met. That is the leverage the town has. It was also pointed out that many of the conditions discussed are merely notes on the plan.

Member Kresge commented that the one big item is the maintenance of the settling basin and he believes that is the problem of New England Wood Pellet since it is on their property. Inspector Baron reminded the board that everyone uses the road to enter the property and the settling basin is next to the road. It is not being maintained like it should. Chairman Merrell asked what could be done about that. Mr. Harper stated that they will commit to do the settling basin whether NEWP does or not.

**There being no further questions Chairman Merrell closed the public hearing.**

To consider the following changes to the Jaffrey Zoning Ordinance

To add Small Wind Energy System (Section IX Jaffrey Zoning Ordinance)

Chairman Merrell stated that the latest draft of the ordinance was sent to Town Counsel Kelly Dowd for review and he made a number of legal changes/clarifications. The changes do not substantially change the ordinance as originally written.

The board reviewed the Attorney Dowd's draft with minor corrections. During the discussion Member Grodin asked if the ordinance unduly impedes someone who wants to put up a system. Chairman Merrell replied that in his mind it does not. Selectmen's Representative MacIsaac and Member Kresge agreed.

Joanne Carr, Director of Planning and Economic Development suggested formatting the document. In place of the bullets there would be numbers. The board was in agreement.

On a motion by Grodin, seconded by Doane the board moved the proposed ordinance to town meeting.  
(7-0)

**There being no further questions Chairman Merrell closed the public hearing.**

**PUBLIC HEARING – CONTINUED**

None

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**DECISIONS**

1. PB 09-12; West Rindge Builders (property of Zilkha Biomass), 143 Old Sharon Rd., Map 255/ Lot 7, Zone: Industrial

Site Plan – The applicant proposes to amend a previously approved site plan.

On a motion by Grodin seconded by Kresge the application proposing to amend a previously approved site plan was approved as presented and per testimony given subject to the following conditions. (7-0)

Conditions:

1. Condition precedent – a revised plan.
2. Propane tanks to be shown on plan.
3. Address the issue of the bank to satisfy the Fire Chief.
4. Note on plan that the sedimentation basin will be dredged and maintained back to the original design.
5. Update the road allowing emergency vehicles to maneuver around the site.
6. Address any outstanding comments from the Fire Chief.
7. Better depict the drainage flow on the plan.
8. Electrical supply to be shown on the plan.

To consider the following changes to the Jaffrey Zoning Ordinance

To add Small Wind Energy System (Section IX Jaffrey Zoning Ordinance)

On a motion by Grodin seconded by Doane the proposed addition, Small Wind Energy System, to Section IX of the Jaffrey Zoning Ordinance was moved to the town warrant. (7-0)

**OTHER BUSINESS**

**CIP –**

Prior to the presentation Chairman Merrell informed the board that he had intended to have a public hearing however the posting deadline had passed and although a public hearing is not necessary it is necessary for the Planning Board to approve the CIP.

Opening the presentation was Member Deschenes, also a member of the CIP Committee. The board was informed that the document is still in a draft form and there will be one more meeting of the CIP committee before the final version is issued which would include any Planning Board comments. Member Deschenes noted that the document is to be used as a tool by not only the board but by the Budget Committee and the department heads. It is to help bridge the gap between the planning and how the money is spent.

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Member McCarthy, also a CIP Committee member stated that the Planning and Economic Development Director JoAnn Carr was a great help to the committee in preparing the document. Adopting the CIP is a function of the Planning Board and it is an opportunity for the Planning Board to interact with the Budget Committee and the Town Manager to establish spending priorities. There was an effort by the committee to prioritize capital projects and level the spending

Member Grodin asked if there is anything extraordinary in the report that the board should be aware of. Member Deschenes replied that compared to prior years the answer could be yes however there is an introduction page that explains it.

Member Grodin recently saw a news paper article that spoke of the poor condition of various town buildings. Are the comments true and if so are they in the CIP? Ms. Carr stated that they are noted but without a dollar figure because the committee appointed by the Selectmen to evaluate the Turner report has not turned in their recommendation as to how we should approach our municipal buildings.

Selectmen's Representative MacIsaac asked if the round-about was in the CIP. Ms. Carr replied that it is not. Another project not included is the community center.

Member Deschenes commented that there is nothing definite about the round-about and the CIP shouldn't be a wish list.

Ms. Carr directed the board to a table on page 5 of the CIP. The table is a gap analysis that is between the Master Plan and the CIP. This is the area that shows the Rte. 202 bypass even though it is not in the CIP. Another table on page 6 shows the community center and it too is not shown in the CIP.

Member McCarthy asked Ms. Carr to explain the table on page 6; specifically the column in between the CIP and the Master Plan. Ms. Carr replied that it is work in progress and something for the Planning Board to be looking at.

Following the discussion Ms. Carr stated that it would be helpful if the board gave the CIP committee a little bit of direction perhaps in the way of a cover memo explaining their intent with the document and to offer comments that will help the committee move forward with a long term financial strategic plan. A letter will be submitted as suggested.

Member Grodin suggested the resolution of thanks to the committee and those who worked to produce the document. Chairman Merrell agreed it was a job well done.

On a motion by Grodin, seconded by Kresge the board voted to adopt the CIP. (7-0)

**Downtown Master Plan –**

The plan had been reviewed by the board members. A public hearing to adopt it will take place at the December 8, 2009 public hearing. Member Grodin asked Chairman Merrell for three copies of the document so that they may be given to Governor John Lynch, Senator Bragdon and Executive Councilor Debra Pignatelli.

**Clarification of the decision for case number PB 09-11, Jaffrey Auto –**

On November 6, 2009 Attorney David Tower submitted a letter to the board asking for clarification on their decision of October 27, 2009 regarding Jaffrey Auto, specifically item 4 of the conditions. Item 4

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stated “The applicant to install pavement or concrete in all areas where vehicles are parked and solvents/paints are handled.” The question being asked was does this include the vehicles being driven to the site by the bus drivers.

Inspector Baron stated that he spoke with DPW Director, Randy Heglin and he said it was not his intention to include the driver’s vehicles.

As a fix to the problem Selectmen’s Representative MacIsaac suggested adding the word “overnight” after the word parked as a means of clarifying the decision. Chairman Merrell agreed and felt the word “overnight” would clarify the issue of temporary parking and permanent parking.

Mr. Ralph Cody asked if the words “school buses” couldn’t be used in place of “overnight”. Chairman Merrell felt the concern is a vehicle being there for an extended period on a pervious surface. If a car is disabled and left there it must be parked on an impervious surface. Mr. Cody asked if the words “long term” would be adequate.

On a motion by MacIsaac, seconded by Grodin the board voted to amend item four of their decision of October 27, 2009. (6-0)

Mr. Cody stated that on occasion a bus driver will be out late and at the last minute decide to take the bus home rather than come back for their car. The car is then left overnight not on an impervious surface and he is in violation of the site plan. Chairman Merrell suggested that if a driver is not coming back that day they should be parking their car in place of the bus.

Member Grodin stated that they understand Mr. Cody’s view point however if he read the Engineer’s report of what catastrophic things can happen to wells Mr. Cody may agree with the board’s view point.

Mr. Cody pointed out that less than 10% of the lot is paved now and paving for the buses may cover another 10%. This decision will render 80% of his lot unusable. The lot is almost 4 acres and not being able to park an overnight vehicle on any other part of his lot is very restrictive.

Chairman Merrell had a discussion with DPW Director Randy Heglin about paving with cement residue purchased from a cement manufacturer. Chairman Merrell worked for a company that used this to pave their parking lot – it makes a very hard surface and a good surface for parking on. Mr. Heglin stated that he would look into this method.

Member Kresge mentioned that the wording in item 5 was very similar to item 4 and whatever word they choose to clarify it should be used in item 5 as well.

On a motion by MacIsaac, seconded by Grodin the board voted to amend item five of their decision of October 27, 2009. (6-0)

Chairman Merrell stated that Attorney Tower’s concern has been addressed. The two conditions regarding parking on an impervious surface were not clear however they should be very clear now.

**OEP - Handbook for Local Officials –**

The OEP has a manual for Planning Board operations. In the manual they have stated that the Planning Board when it is organized should institute rules of procedure as to how the Planning Board operates in order to inform the public as to what they are doing. Member Grodin volunteered to draft such document

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and a copy was distributed to all members. Member Grodin suggested that it be reviewed by board members. The intention is to accept it at the December meeting.

Another point raised by Member Grodin regarding the OEP manual is that of pre-acceptance and post-acceptance procedures. Member Grodin feels they have melded the two and a note outlining the issue was distributed to the board. Ms. Carr suggested writing a memo to the OEP and if there are corrections to be made it can be circulated state wide. Member Grodin felt if the board agrees after reading this note then a memo would be in order.

**Vested Rights –**

Chairman Merrell spoke about vested rights, which was addressed at one of the LGC law lecture series. Vested rights are when a development is approved and the developer has certain rights applying to that project. One area that the board has never addressed is the vested rights that go with a project. If the board doesn't address it for each approval the OEP says "failure of a planning board to specify by regulation or a condition of subdivision plat or site plan approval what shall constitute active and substantial development or building shall entitle the subdivision plat or site plan approval by the Planning Board to the four year exemption period described in the state statute." If the board defines active and substantial development then the board can restrict that from the four year exemption period to one year.

Chairman Merrell suggested asking Town Counsel Kelly Dowd for advice on how the board can address the issue. They do not want to address each subdivision separately so it should be addressed in the subdivision regulations. Chairman Merrell asked the members to visit the Local Government Center on line and review what they have about the topic. He would like to discuss it at the December meeting.

Member Grodin cautioned Chairman Merrell stating that when a body of law tries to define well known commonly used terms you're in trouble. It was suggested that the law cases noted in the statutes book be reviewed.

Ms. Carr agreed that it is an issue that should be addressed by the board. She also stated that she has worked with other towns on the subject of defining active and substantial and substantial completion. In some cases you can apply generic rule and in other cases you may want to allow a certain amount of flexibility depending on the case. Ms. Carr added that the board can define "*active and substantial*" and "*substantial completion*" in the site plan as well as the subdivision. "*Active and substantial*" means within the first year; that the developer has completed a certain amount of work in order to get the project off the ground. Then within four years have they done "*substantial completion*"; for example if it's a ten lot subdivision and they built out six lots. There is also flexibility to the developer as well. If they are not meeting that schedule they can return to the board and ask to have an amendment to the schedule for "*substantial completion*".

**ADJOURNMENT**

The meeting adjourned at 9:30 p.m.

Submitted:

Attest:

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Erlene Lemire  
Recording Secretary

Edward Merrell  
Chairman, Jaffrey Planning Board