

BETHLEHEM PLANNING BOARD

Joint Meeting with the Select Board

BETHLEHEM TOWN HALL MEETING ROOM

July 7, 2014

Planning Board Members Present: Chris McGrath, Mike Bruno, Peter Roy, Dave Wiley, Andrea Bryant, Jeannie Robillard, and Don Lavoie

Select Board Members Present: Sandy Laleme, Mike Culver, Martin Glavac, Gerald Blanchard, and Mark Fiorentino

Excused: Kevin Roy

Absent: Neil Brody, Alecia Loveless, and Libby Staples

Sandy calls the joint meeting to order at 6:30 and invites elected Planning Board members to sit at the table and offers a reserved bench for the alternates.

Dave appoints Don as a full member for Alecia.

Dave asks the Planning Board members for a motion to make Planning Board Attorney Jae Whitelaw's response to Dave's email regarding Article XVIII, Enforcement of the Zoning Ordinance. Mike Bruno motions to make the contents of Jae Whitelaw's email public. Peter Roy seconds. Motion carries unanimously.

Dave summarizes by offering that the Planning Board was under the assumption that the Select Board was required to enforce a zoning matter once the Planning Board sent it their way, based on Article XVIII of the Zoning Ordinance, specifically sections G and H. Attorney Whitelaw's email states differently,

Unfortunately, the only viable recourse for the planning board in this instance is to exert political pressure/persuasion to convince the selectmen to decide to enforce the site plan review regulations. As you noted, the selectmen hold the enforcement authority. There is no legal requirement that the enforcing authority enforce a violation of the land use regulations, even if the facts are clear that a violation has occurred. The law is very clear that the decision of whether to enforce a land use regulation is discretionary. The rationale is that the enforcing authority weighs many factors in deciding whether to enforce, and does so in the context of having limited resources available and thus is required to prioritize the expenditure of town funds and effort.

Pursuant to RSA 676:5, a decision to enforce a land use regulation is appealable to the ZBA by identified parties, but only where the decision is TO enforce – not when the decision is to NOT enforce; this statute is not available to the planning board. While the zoning ordinance enforcement language is mandatory, i.e. the selectmen “shall take immediate steps,” the court will not apply this language so as to remove the selectmen’s discretionary authority. There simply is no mechanism to require the selectmen to enforce the land use regulations. This is not to say that it would be pointless to hold a joint meeting to discuss this particular matter with the selectmen; it just means that the planning board doesn’t have any “legal” leverage.

Sandy Laleme addressed a number of issues from the last Planning Board meeting before responding to the email. First, Sandy explains that she sits on the Planning Board as an ex-officio of the Select Board, and neither board can make her vote one way or another. Second Sandy addressed a comment made regarding her connection to the racing industry. She wanted to be sure people understood that she had no association with the racing industry outside of supporting her son and grandson as participants. Thirdly she feels it is important for people to know she has the right to vote how she wants to vote, and votes independently.

Sandy informs the Planning Board that the Select Board consulted with their lawyer, but did not receive a response to their email until just before the meeting as the attorney was on vacation. The Select Board requested that the Planning Board give them some time to digest the response and invited the Planning Board back in two weeks to continue the discussion.

Andrea comments that, regardless of what the project is, if the Planning Board feels the matter needs enforcement and sends it to the Select Board then the Planning Board would hope that the Select Board considers the decision and confer with the Planning Board on the situation before making a decision.

Sandy informed the Planning Board that once the matter was sent to them they requested a packet of material from the Planning Board clerk, and felt they were knowledgeable to the project, but admits the Select Board may have put the cart before the horse by not contacting the town attorney first, but now they Select Board will discuss the matter further with their attorney before making a final decision. Sandy goes further by stating there is a lot of discussion on jurisdiction, access, whether the town of Bethlehem can look at that ¼ mile of road. What is Select Board is looking at for that ¼ mile of road, because that’s all the board can look at. Sandy feels that the Select Board did not intentionally ‘poke the Planning Board in the eye.” Sandy feels she represented the situation well to the Select Board.

Don Lavoie points out that this matter has been before the Planning Board for a long time and meetings regarding the drag strip are always well attended. Don is present tonight to request that the Select Board take the time to review the matter and the legal opinion of the town attorney before coming to a conclusion. He adds that taking the matter to Superior Court is a serious and a decision should not be taken lightly. He wants the Select Board to know that the Planning Board agonizes over the decision for a long time and took the decision very seriously. He also states that Jae Whitelaw’s has been the

planning board attorney for years, and her opinion is inequitable; you have SPR authority and Mr. Ingerson should comply.

Don points out that any discussion, without an application, is inappropriate. Without an application we have no evidence, we don't have any evidence. There is no testimony over what the traffic is, what it might be, what it used to be. What are the dimensions of the road, what is the capacity of the road? For any talk of those facts without a SPR is inappropriate. The PB has a duty not to form an opinion before the facts have been presented. Don feels some members have already formed an opinion of what the impact will be before an application was filed or any evidence presented. This is not about the road, but rather, does the town have the authority to say what is going on here, what are the facts, and the public has an opportunity to comment. The public has the right to be heard on this, in an official meeting that has been noticed. This sort of meeting can only occur if there is an application for SPR. Don cautions members about forming an opinion before an application is before the board. Without an application for SPR there is really no knowledge of how long the road is, what the impact will be, and what the other facts surrounding the project are. Don goes further stating the Town has the authority to request a SPR and the Select Board's decision to not follow through with the request of the Planning Board in essence says the Select Board is not going to support the Town's Zoning Ordinances. Don also states that SPR is not a "big deal." It's not burdensome on an applicant and is not a big expense. Don feels the decision was not given the thoroughness it was due.

Sandy feels no further decision can be made without having read the attorney's email from earlier in the evening. Sandy feels the matter has been discussed a great many times, and a lot of it has been on jurisdiction. The Select Board will do their due diligence by reviewing the information and discussing the matter with the town attorney.

Don requests a period of public input for those people in attendance that might not be able to make another meeting. Sandy grants 15 minutes for public input, but cautions that the Select Board will not be able to answer many questions without having read the attorney's email.

Mark Fiorentino would like to point out a section from the minutes of the 9/25/2013 Planning Board meeting in which LGC attorney Paul Sanderson states:

"A planning board has no jurisdiction over a land use matter until you have an application before the board. See RSA 676:4, I. Thus, a planning board has no ability to contact a landowner and request a site review to be filed. If the owner of the land undertakes some changes, and the enforcement authority (usually the board of selectmen) feels a local review was required, that becomes a land use enforcement matter for the selectmen under RSA 676:15-17. Usually a decision on enforcement results after a discussion with the town attorney."

Mark questions what there is to enforce. Andrea wonders if Mark is suggesting that if some large corporation came into town and just began to build without coming before the Planning Board for SPR that they just let it go and allow them to proceed. Mark does not feel this is an adequate comparison.

Sandy recognizes Jeanne Robillard. Jeanne points out , that is what we are asking you to enforce. People who are commencing a project, who have not gone through the SPR process have to come in. That's what the Planning Board is asking the Select Board to enforce. Otherwise why have a SPR process? The whole point of SPR is to know what is happening, what the facts are and to determine what the impact of the project is going to be. The requirement to go through that process is the same.

Sandy questions where or not the Planning Board has the right to waive a SPR. Dave, yes, but that's after an application has been submitted.

Sandy asks for other comments form SB and PB members.

Jerry would like to look at what the attorney has to say and maybe rethink his decision.

Don points out that what Mark said is perfectly in synch with what the Planning Board attorney said, the enforcement lies with the Select Board. The Planning Board, upon research and consultation with proper counsel, has reached the conclusion that there is a project in the process that fits the criteria for SPR. The Planning Board can't ask the property owner to come in, but the Select Board can. The Planning Board has reached a decision that this project constitutes a change of use. The key words in the Town Zoning Ordinances are change of use. Any change of use, non residential, requires SPR, period. The purpose of SPR is to determine if there is an impact to public health and safety and to reviews whether of not this site is appropriate for the activity. The jurisdiction the town has is over the private road that goes through Bethlehem, but the state law states that when the project is in one town and the only access is in another town, the town with access may review the impact of the entire project. What is the impact on the Town of Bethlehem police and fire departments as well as the emergency responders and water resources? Those are the concerns the Board should have. The Town of Bethlehem has no say on allowed use, but does have the right to question what the impacts are. Current neither Board has an idea of what the impacts are. The Planning Board is asking this property owner present the facts.

Jerry questions that lack of SPR for the Asphalt Company using the same access road. Dave offers that there is no history, and that the Planning Board wants to focus on the matter at hand and not go back in time. Dave states that SPR is not a bad thing. The Planning Board is not able to make assumptions or opinions prior to having SPR. Currently the Planning Board has no knowledge of what the drag strip looks like, what it entails, how much parking and so forth. Dave goes on to question, if parking is inadequate, where does everyone think the over flow is going to park? Most likely right along Rt 116. Dave also points out that If there are going to be 300 to 500 cars there than the Board needs to look at police detail.

Sandy opens the conversation up to the audience:

Judy Gilligan of 53 Melody Lane in Bethlehem asks the Select Board to consider carefully the value of property and feels that Dalton should "let them in the other side."

Mary Lou Krambeer of 46 Oak Ridge Rd wants to remind everyone why they are there. This is a question of letting the people who live nearby understand what the proposal is. She points out that while there has not been an application for SPR filed with the Town of Bethlehem, there have been 3 proposals submitted to the state with the hours of operation listed at 7 am to midnight 365 days a year. Her point being that we do have information, we know there is a plan.

Pat Doughty, former Planning Board chair comments that what it all boils down to for him is the access points. If Mr. Ingerson has more than one access point than it doesn't matter. Also, that DOT gave him the permit meant a lot for his support. The Planning Board has taken many votes towards enforcement and wonders how it would make the Planning Board look if the Select Board did not follow through with enforcing. Pat also cautions, regarding attorney advice, it matters how you ask the questions.

Sarah Doucette, Whitefield resident, wants to remind everyone that there has been tremendous turnout for meetings regarding the drag strip for years now, so when the questions comes up whether or not you are going to call an meeting of regional impact she thinks there can be no doubt that the people of the neighboring communities and Bethlehem, believe there is an impact on them, and the way the statute is written, if there is any doubt than the meeting is called. We are all here because we are interested and what to know more.

Katherine Anderson, Hazen Road. Having a SPR seems like such an obvious expectation and it seems like it's not only the right thing, but the responsibility of the Planning Board to ask for a SPR if there is any possibility of impact. Many people feel there is a great possibility of impact. If it is up the Select Board to enforce then why is there any question? At least for the concerned citizens.

Don Lavoie wants to talk a little bit about Ammonoosuc Asphalt, which is within this parcel. There was an application received by the Planning Board for a campground also for within this parcel. The campground was in Littleton, the access was through Bethlehem. Littleton called for regional impact. Don wonders if Ammonoosuc Asphalt should be asked to come in for SPR and reiterates that SPR is not a big bad thing. It's a process. Let's see the facts. Its cooperative process and protects everybody.

Jeanne states that part of the Planning Board process, and some of the things the Planning Board members took into consideration while deciding was whether of not the Planning Board has the authority to insist on SPR and should they hand the matter over to the Select Board for enforcement. One of the biggest issues of part of the Planning Board's process was, if they didn't do this what sort of precedent does this set for the future and for other projects and will that have some other unintended consequences for the town somewhere else down the line. She asks that the Select Board also think in those terms.

Don motions to adjourn, Peter seconds. All in favor, joint meeting ended.

Respectfully Submitted,

Dawn Ferringo

Planning and Zoning Clerk