

**MINUTES OF THE PLANNING BOARD PUBLIC HEARING
TOWN OF CHARLEMONT**

October 28, 2004

Members Present:

Bill Stephens
Charlotte Dewey
Dan Miller
Ursula Nebiker
Gisela Walker
Absent: Trevor Mackie

Others Present:

Marie Hall
Doug Dean
Bill Southers
Beth Hersh
Jeannie Dewey
Larry Miller
Dennis Tsoumas
Frank Mooney
Perry Schwarzer
Gail Ober (The Recorder)

The meeting convened at 7:02 p.m. and began with the continuation of the Hyytinen Hollow tubing hearing of September 9, 2004, when the Board had also made a site visit to Marie Hall's property. The purpose of this hearing was to draft the final conditions of a Special Permit for Marie's tubing business.

Bill Stephens asked Marie about her plans for signage, to which she replied that she wanted a basic design with dimensions of 30"x 40" and gave the Board a drawing of the sign. She would like to operate her business from June 1st through September 15th of each year. Her hours would be 10:00 a.m. to 6:00 p.m. seven days a week.

Marie's Special Permit will read the sale and rental of inner tubes. The biggest concern is safety and etiquette, and the Board spent a considerable time discussing safety requirements.

Marie said that at present she tells parents of young children that they must wear lifejackets, but she can't make an eighteen year old wear one, nor does she have any control over what they do once they leave her property. Both Frank Mooney and Perry Schwartz felt that she should make it clear that lifejackets are essential and required. Bill said that if they leave the property with the proper equipment on, then there's nothing more that Marie can do.

Dan asked why lifejackets were required by law for Frank's rafting business (Crabapple) and not for tubing. Frank replied that it was actually not a legal issue but a requirement by his insurance company, though he personally believes that lifejackets should be worn by all those who use the river.

More discussion ensued as to whether or not to require helmets and shoes. Perry said that if people were going to get hurt, it would be one of two ways: either by foot entrapment or hitting their heads on rocks. He felt that Marie could easily solve this problem by giving out detailed safety information to her clients.

After more discussion, it was decided that lifejackets, shoes and helmets would be required by all of Marie's clients.

Bill said that any regulations have to be consistent with Mass. State Law and that a boiler plate should be created that can be used for any future tubing permits.

It was agreed that Marie will be required to implement a safety program consisting of a talk or movie to cover the following points: no drinking, no drugs, no glass, no Styrofoam. The tying of tubes together will be prohibited. Maps should be handed out that show public and private egress, as well as information on river flow and the maximum flow rate when rentals are prohibited (Marie currently will not rent with a flow rate over 1100 CFS), information about river etiquette such as littering, harassing, and swearing. In addition to the safety talk, clients must be made aware of what to do in the event of an emergency, sickness, injury, lightning, etc.

Bill said that there must also be a release of liability of the Town. Bathrooms will not be required, although Marie allows usage of her bathroom.

The type of tubes Marie uses was discussed. She prefers vinyl tubes, as they last longer than the black rubber inner tubes.

As a safety issue, it was agreed that her clients should be prohibited from smoking while using the tubes.

Bill felt that no-one under six shall be allowed on the river, nor any riding on laps in the tubes. This will mean only one person per tube.

Frank questioned that since no alcohol is allowed on the river, would it be Marie's responsibility to check her clients' coolers? Bill believed it would be difficult for her to do this. Frank suggested putting in the brochure that the law (MGL CMR 323 2.12.5) prohibits the consumption of alcohol on the Deerfield River from Monroe Bridge to Buckland. Bill agreed that this should be part of the safety literature.

To protect fishermen on the river, present regulations prohibit tubes from being used above the Route 2 bridge by Mohawk Park. Marie said most of her clients nevertheless go up to Zoar Gap and then tube downriver to the bridge. Bill would like the Deerfield River Impact Committee to push for a change in the law to enable tubers to legally put in below the Zoar Gap and said he would be happy to participate in any discussions held in this regard.

Frank stated that there was currently no director of the Environmental Police, who would be the one responsible for holding a public hearing. He said that this is a big issue and would be well worthwhile. Bill said that for now, however, Marie must abide by the law. In the meantime, the Planning Board will serve as active participants in seeking the change.

Frank suggested that Marie give her clients a map that provides three or four trip options for them to put in and out of the river, but should remind them that they cannot put in above the Mohawk Park bridge for the time being. She should also tell them the locations of public restrooms, telephones, etc.

Ursula asked Perry if most of what was being discussed here was covered by the Deerfield River Impact Committee, to which he replied in the affirmative. He said that they have plans to create a map of the river, but nothing is yet in the works.

The Board decided that Marie should design a brochure and a simple map for her clients to include all the above requirements and bring it to the Board for final approval.

Frank asked if Marie is required to be a Massachusetts registered business in order to receive a Special Permit. Bill replied that the Board does not require it, but she still has to abide by the law. Frank then suggested getting together with the Town of Florida, which also has a tubing operation, as they may want to add some of the conditions of Marie's Special Permit to their boiler plate.

Gisela suggested having Carlene mail a copy of Marie's permit to the Town of Florida, as well as to other abutting towns.

The Board decided to meet with the Selectmen, with the help of Frank and others, to endorse a change in the regulation that states where PFDs can currently be put into the Deerfield River. Carlene will compose a letter to the Select Board, asking this issue to be put on the agenda of their November 9th meeting.

Bill suggested getting together with Marie, Frank, DRIC, and other interested parties to create a boiler plate document listing the safety and etiquette requirements that Marie could give her customers. This document could also be posted at various places in town, including the Shunpike kiosk.

Frank felt the safety and etiquette rules should be delivered live. It was suggested Marie could read it to her clients.

Marie asked who should sign the release forms, as there may be several in a party but only one person picking up the tubes. It was agreed that everybody over 18 years of age must sign the form, with a legal parent or guardian signing for those under 18.

Bill made a motion to grant Marie Hall DBA Hyytinen Hollow Tubing a Special Permit to sell and rent inner tubes for use of tubing on the Deerfield River. Dates of

operation will be June 1st through September 15th and open 10a.m. to 6 p.m. seven days a week. Lifejackets, helmets and shoes are to be required by everyone. Children under six years of age are prohibited. There will be only one person per tube, and the applicant will be required to implement a river safety and etiquette program* The applicant shall have all clients sign a waiver of liability indemnifying the Town of Charlemont of all liability. The applicant shall carry liability insurance. Parking and final signage design and location will be per attached plan.

*The program shall include a safety talk, movie or printed literature to go over the following: no drinking, no drugs, no smoking, no glass, no Styrofoam containers, no tying tubes together, a map showing public ingress and egress to be provided, information on river flow, trips prohibited at flow greater than 1100 CFS. Information about etiquette shall include littering, swearing, harassment of others, what to do in the event of an emergency, how to contact emergency personnel, where telephones are located, what to do in the event of a lightening storm, where sanitary facilities are available, the use of the defensive swimming position, the requirement that participants be able to swim, and no standing up in the water unless the water is less than halfway up the shin].

The motion passed unanimously.

Frank asked to be given a date to update his permit, as he would like to add funyaks and tubes. The Board gave him a date of January 6, 2005.

Next on the agenda was Doug Dean's request for a Change of Use for his sugarhouse on Route 2.

Doug explained that Charlemont Academy had approached him about leasing them a small part of the sugarhouse to use for school activities such as wood/metal work or sculpturing. He said he would need to close the back half of the building, but he had been planning to do this anyway. He said that the Academy has no facilities of their own, and it would be low impact for the neighbors. Ursula asked if he was going to change the outside appearance of the building, and Doug said no, he wasn't.

Bill informed Doug there would be no problem; he would just need to submit an application for change of use from agricultural to commercial. There was some discussion as to whether this could be exempt from need of a Special Permit, as it was for educational use.

Bill said that Doug should give the Academy a letter of permission to lease his building for the purpose of Art space.

It was agreed that Doug would submit his application and the Board will schedule a hearing for him to get a Special Permit.

Next on the agenda were Jeannie Dewey and Beth Hersh, who came before the Board to discuss their problem of not being able to build on the lot they purchased on Cherrie Pierson Road. They were accompanied by their realtor, Larry Miller of Jones Town and Country Real Estate, and Dennis Tsoumas, their attorney. Also present was Bill Southers, who has also purchased a lot on Cherrie Pierson Road with the intention of building on it.

Bill Stephens explained that Beth, Jeannie and Bill were unable to obtain a Building Permit due to the non-compliance with the subdivision rules adopted by the town in 1979. The Board then reviewed the subdivision map of the road, which contained 14 lots. Bill Stephens explained that a number of subdivisions were planned in Charlemont in the 1970s and the plans were submitted prior to the Subdivision Control Law. Since then the lots have remained vacant, with the exception of a large brick house further up the road, and the road has since disintegrated. Since 1979, any road in town must meet a minimum standard in order to accommodate vehicular traffic, especially emergency vehicles. Bill explained that the Planning Board has no bias or problem with anyone owning property on that road, but granting a building permit is not possible until the road has been brought up to minimum design standards.

Bill Stephens pointed out that, according to the Subdivision Control Law, any subdivision that has ten or more lots on it is considered a major right of way, and must therefore adhere to the minimum standard of 24 feet wide. There are also grading, drainage and other requirements for these roads. The Planning Board has been approached a number of times by interested buyers of parcels of land on this and other similar roads and they were told that they could not build until the roads were brought up to par. The Board reiterated that even though these lots may have the correct frontage and acreage, no Building Permits can be issued until the road issues have been dealt with.

Bill Southers informed the Board that he was told he could build on the lot and that he had had a successful perc test done on his land. Bill Stephens questioned why he was able to get a perc permit in the first place, and that Bill Southers should have come to the Planning Board first. Bill Southers said that he talked to Gloria Jean Purinton in the Assessors' Office and had not been made aware of any problems with the land. He said that this was all new to him, as it is the first land he has ever purchased. He also said that his deed had some issues that needed straightening out, and yet he was still not told he couldn't build on the lot. He assumed he could go ahead and build until he received a phone call saying that there was a problem.

Bill Stephens replied that it was unfortunate that the Planning Board had not been approached, as the Board is responsible for any subdivision and zoning issues.

Larry Miller said that he had seen a 1986 memo from the Board regarding this lot and he knew that there are already two houses on this road, one at the beginning and one halfway down. He asked if they were given a permit to build? Bill Stephens said he didn't know. Larry replied that they were, as he tracked it down and found they were issued a permit in 1986.

Bill pointed out that there have been at least four different Building Inspectors between 1986 and the present, and they did not always communicate properly with the communities they represent. The Franklin County Building Inspector represents 17 communities, each with their own zoning bylaws, and what is permitted in one community may not be permitted in another. The Building Inspector may have issued the Building Permit on the criteria of the zoning requirements, unaware of the subdivision requirements on that particular piece of land.

Jeannie Dewey said that if the Building Inspector doesn't know where to look, how can the average person know who trying to buy a piece of land? Charlotte told Jeannie that the Building Inspector is now well aware of the problem and will enforce it.

Dennis Tsoumas stated that according to maps from the Registry of Deeds made prior to the enactment of the Subdivisioin Control Law, Cherrie Pierson Road lots are shown as having the proper width, grade, and adequate construction to meet the needs of vehicular traffic.

Charlotte replied that the road was in much better shape in 1986 than it is now and was still maintained.

Jeannie said that she has looked into bringing in gravel to widen and improve the road, but there is a large rock that would have to be removed, and this could be very expensive. She said that with so few people living on the road, there would be no problem with cars passing each other.

Bill Stephens reiterated that there are safety issues that must be taken into consideration, but it may be possible to come to a compromise in this particular case.

Larry Miller submitted a before and after picture of where an owner of a lot on that road had improved the road, and stated that his clients are willing to do the same to their property.

Bill asked if there was a cul-de-sac of any size on the road and Jeannie replied there was a 60-foot wide one at the end of the road.

Ursula asked Larry Miller if all the lots now on the market would sell once the road were improved, to which he replied that he had no knowledge of the other lots. He had heard that there may be a problem with getting electrical power to the lots and had alerted his

clients. The attorney that gave him the lot to handle had no knowledge that this was not a buildable lot because it conformed to the law at the time.

Larry went on to say that there are several legal questions, but he suggested focusing on the practical aspects of the problem, such as bringing the road up to standard. He mentioned that he did not consider the road was abandoned, as there is nothing mentioned in the Registry of Deeds, and that a public hearing would have to be held. However, he recognized that the town did not accept the road, but went on to say that his clients were willing to maintain the road and asked for a “softer” solution to this problem.

Bill Stephens said it was the responsibility of the buyers and their counsel to do the research, not the Planning Board. He lamented the unfortunate lack of inter-Board communication, as this problem could have been recognized before money had been invested. The only concern he had with bringing the road up to minimum standards was that now they have 14 building lots on a road that is barely passable for one car. A good example of a road that was in a similar situation is Hawk Hill Road, off East Oxbow Road, which was brought from a very primitive subdivision road to a 24 foot wide road with adequate drainage and grading that has now been assumed by the town.

Bill replied that unfortunately record keeping has sometimes fallen through the cracks, and recognized that both parties feel victimized here, but the Planning Board has historically worked with everybody and been able to come up with a compromise.

In answer to a question from Charlotte, Jeannie said that they had talked to the Building Inspector and had been told by him that the lot was buildable, and that if they got Planning Board approval he had no problem in issuing a permit. Jeannie said that if there are four or five other roads in town that do not meet the minimum standard, the Planning Board should make sure that they are registered as such to prevent any problems in the future.

Bill recognized that and stated that it has never before come up.

Jeannie said that some of the lots on the road are wet and most probably could not be built on, and would therefore be difficult to sell.

Bill suggested getting together with the Highway Superintendent, the Fire Chief, the Planning Board and Beth, Jeannie and Bill to get their opinion of the road. If they have no great objections, the Planning Board would then be much more willing to consider an acceptable minimum design standard to make the lots buildable.

He said that the Board is willing to do the best we can, but we have to be very careful about setting a precedent. He also hoped that the Planning Board, the Building Inspector, and other Boards in town will all be aware of these problems in the future.

Jeannie said that she and Beth had put their life savings into buying this land, had purchased a home that is waiting to be erected, and that they are only asking to be

allowed to live there. She repeated that they would do what they could to bring the road up to standard.

Bill stated that the Board is willing to work with them, if there is any way to do so, and to come up with a solution to all this. He also said that Town Counsel needs to be consulted on the matter, and possibly a temporary variance could be arranged until the issue is resolved.

Beth said she thought it would be difficult to bring in electricity, although they personally did not want it. Bill Southers said electricity could be brought down the road if some trees were cut down.

Bill Stephens asked if there were easements that would need to be acquired for that kind of power. Bill Southers stated that the electric company usually takes care of that.

Bill Stephens acknowledged that there will obviously be some expense in getting the road up to minimum standards, but that it will hopefully be kept as much to a minimum. When Charlotte expressed her reservations about a fire truck and ambulance being able to pass on the narrow road in the event of an emergency, Bill thought that they could look at some possibilities of wider pull-offs or several turnouts. The Board will discuss the matter further after looking at the road.

The Board agreed to try to get together with Fire Chief Ken Hall and Road Superintendent Gordy Hathaway on Monday to check the condition of the road.

The next Board meeting was slated for November 4th for internal Board issues. The Board will make every attempt to stay on its previous schedule of having meetings on the first and third Thursdays of each month.

The meeting adjourned at 10:10 p.m.

Respectfully Submitted,

Carlene Millett
Secretary to the Board