

Town of Plainfield
Development Review Board (DRB)
Minutes of Meeting held on May 14, 2014

Final Minutes Approved on: June 11, 2014

Present:

___x___ Janice Walrafen, Chair

___x___ Rob Bridges

___x___ Neil Hogan

___x___ Sarah Albert, Clerk

(Full DRB in attendance)

Also Present:

Karen Storey – Zoning Administrator (ZA)

Mary Lane – Administrative Assistant

Charlie Cogbill – guest, land abutter to the Health Center

Jim Malloy – guest, Black Bear Biodiesel

Peter Young – guest, Second Wind, LLC

6:50 P.M. – Meeting called to order by Acting Chair Bridges.

Chair Walrafen arrives at 6:53 P.M., and begins to chair the meeting.

Agenda Item #1 – 6:52 P.M. -- Review/Approve: Agenda, Minutes, Decision.

- The agenda was reviewed with no changes made.
- Discussion ensued about minutes of the 4/9/14 meeting. Two versions of the minutes were presented, a longer and shortened version, both of which were emailed to the DRB members prior to the meeting. DRB member Bridges makes a **motion** to accept the shortened version of the minutes of 4/9/14 with corrections. DRB member Hogan seconds, and the motion passes unanimously.
- DRB members review the Variance-Findings and Decisions on the application of: N.E. Washington County Community Health, Inc (The Health Center).
 - DRB member Bridges notes there is no date indicating when the DRB expects the new site plan.
 - Mr. Cogbill brings the minutes of a joint meeting between the Planning Commission and the Zoning Board of Adjustment (ZBA) in 2007 that he reports mentions the sign, landscaping, and coordination with the tree planting. He also mentions that the berm is included, but Z.A. Storey does not believe it was mentioned in the decision. Mr. Cogbill and Clerk Albert believe it is mentioned in the ZBA decision. The DRB members agree this has become complicated, but DRB member Hogan reminds everyone that this will not be the case once the new site plan is created.
 - Clerk Albert suggests when Z.A. Storey sends a copy of the Decision, a cover letter stating the paperwork be in to the DRB in August, for a Hearing in September be included.
 - The DRB members discuss how to handle an acrimonious letter sent from an interested party. They decided to place it in the file drawer.
 - Z.A. Storey asks if the information brought to the meeting by Mr. Cogbill should be included in the Findings, since it was discussed during the 4/9/14 Hearing. Discussion ensues about the information and how it needs to be referenced. It was suggested that it be included under #6 in the Findings, and at that time it was noticed that the number 6, is used two times.
 - Clerk Albert reads out loud the amendment to Finding #6 she just wrote. Chair Walrafen calls for a motion to accept the amendment to the Findings, with corrections. DRB member Bridges **moves**, DRB member Hogan seconds, and the motion passes unanimously.

Agenda Item #2 – 7:45 P.M. – Discussion of the Unified Regulations to propose a timeline for sending the regulations to the Planning Commission, and Discussion of uploading the minutes to the town web site.

- DRB member Bridges would like another month before sending the Unified Regs to the Planning Commission. All agree. Chair Walrafen mentions that a joint meeting needs to be happen with the Planning Commission.
- DRB member Hogan updates Chair Walrafen on the Town Website Training given by Ivey Hardy (web designer). DRB member Hogan will inform Mr. Hardy to add specific sections on the DRB page to warn hearings, post minutes, and display agendas for the meetings.

Agenda Item #3 – 8:00 P.M. – Second Wind/Black Bear Biodiesel (BBB) Discussion.

- Chair Walrafen reports she was late to the meeting because she was talking with the Chair of the Select Board, Alice Merrill, about an email forwarded to DRB members from the attorney for Second Wind, LLC/ BBB to James Jamele who is the Town Attorney. DRB member Bridges states he read this email and had questions about the safe storage of blends, and permits. Chair Walrafen responds she knows Mr. Malloy can answer those questions, however she wants to focus on Ms. Merrill's explanation of the situation described in the letter. A hearing was set in the Environmental Court for May 20th, 2014. However since neither party wants to attend this hearing there are 2 issues. Because no one filed a stay, the SB would like the Z.A. to issue a permit so they can open their doors. Z.A. Storey reports that one was issued on October 24th, 2013 to build. Chair Walrafen interjects the SB and Jim Jamele report that BBB is allowed to open their doors to sell B100 because there was no stay

Jim Malloy of Black Bear Biodiesel, and Peter Young of Second Wind, LLC enter the room. They are told what has been discussed to this point. Mr. Cogbill exits.

- Z.A. Storey repeats that she says they can build, because they met all set back and other requirements, but she did not say they could sell, as that would need a conditional use permit. Chair Walrafen reads the Findings, and then the Decision with the conditions. DRB member Bridges notices there is only mention of how he would store B100, and that it did not need a permit. Mr. Malloy agrees he only asked to collect and sell B100, and planned to ask to sell blends when he was more financially able to do this. He reports that Mr. Vallee wants clarification because the permit only mentions biodiesel, which could be any blend of biodiesel and petrol. Everyone agrees the issue could be that the mention of B100 is only in the Findings, and not in the Decision.

- Mr. Malloy questions if they could have been open and selling B100 this whole time? Chair Walrafen states the Select Board Chair, and the letter written to Jim Jamele from BBB's attorney seem to agree they can be open to sell B100. Mr. Malloy states, he was told by either the Z.A. or DRB Chair, that because there was an appeal, he could not sell. Z.A. Storey reiterates that the permit she

issued was to build, and he could proceed with building as all the requirements for that were met. Mr. Malloy states that he would not want to build if he couldn't sell, and it would only take a couple of weeks to be ready to sell. He questions why his lawyer did not tell him he could sell during the appeal?

- Chair Walrafen reads from the State Statutes what constitutes a stay. She concludes that since the court did not issue a stay, that the permit stands, and she will let the SB know this decision. She asks to have Mr. Malloy's input on the issue of the remand.

- Clerk Albert reads from Ms. Merrill's email that clarifies what the DRB is being asked to do. "1.) Decide to file a request to the court for a remand. 2.) Schedule the remand hearing for the June or July DRB meeting, and 3.) State at the remand hearing the project is approved for blended biodiesel in addition to the already approved sale of B100." Chair Walrafen agrees with DRB member Bridges that the original hearing only approved B100, and goes on to read a letter from Mr. Malloy's attorney that states his client is now wishing to apply for a blend.

- Mr. Young explains that originally they had only wanted to sell B100 but because there has been a hold up for a year, and if the language in the original Decision was not specific enough, then they were hoping to use the remand hearing to include the blend. Discussion begins around this subject but Clerk Albert calls a point of order to say that no discussion about how the blends will be addressed can be mentioned. Mr. Young agrees and states what they want, is to leave the meeting and know they can start to sell B100. Then they can take their time to figure out the blends.

- Chair Walrafen suggests they may want some time to gather the supporting information they will need if they would like a remand hearing. She mentions the Engineer's letter about the traffic flow, and the need to prove this will not change if a blend is sold. Mr. Malloy reports the collection aspect of the business is going well, so they are ready to sell B100. However, they want to make sure they have everything in line so the process will not be held up further. Mr. Young heard you cannot come in for repeated hearings, but Z.A Storey and Clerk Albert let him know he can return an unlimited amount of times.

- Clerk Albert states that Vallee said he would not appeal a remand hearing to clarify that only B100 will be sold. So it may be best to stick to that, then they would have a clean permit that everyone agrees to. Then when ready, they can come back to ask for a change for blends. Discussion continues about the process and what can be appealed, but the question comes up again about continuing to do business while there is an appeal. The DRB members believe there will be no appeal as long as the remand hearing is for B100.

- DRB member Bridges questions if the blend has any different safety concerns as opposed to B100, and if we have supporting documentation. Mr. Malloy responds the double wall storage container already planned for, meets requirements for all blends. The only change is to contribute to the Petroleum

Clean Up Fund. Mr. Malloy adds that a letter from his lawyer stating compliance with the A.N.R is in the file. Z.A. Storey affirms this.

- Discussion returns to the date and what will be covered in the remand hearing. Chair Walrafen again reads from the letter from BBB's lawyer that suggests they ask for the blend in the remand hearing. Z.A. Storey asks what to include on the hearing notice. Discussion ensues about whether they can ask for a blend at the hearing, or if they have to file an amended application. DRB member Hogan states this is BBB's decision. Mr. Malloy states they want to remand the hearing to the DRB, so as to clarify the Decision to say they want to sell B100. They would like to get a final opinion on if they can currently be open and selling B100, as they would like to open in a few weeks. Chair Walrafen is going to check with Jim Jamele.

Mr. Malloy and Mr. Young exit the room.

- Discussion ensues on how to proceed. DRB member Hogan states the letter from the BBB's lawyer is a suggestion, not an order to consider blends at the remand hearing. All members agree and Clerk Albert makes a **motion** to send a request to the Environmental Court for a remand of the application on June 11th, 2014, at 8:15 P.M. DRB member Bridges seconds the motion, and it passes unanimously.

- Clerk Albert wants clarification on how this is going to happen. Chair Walrafen reports she will contact both Jim Jamele, and Alice Merrill, and will ask if Mr. Jamele will either write the court or give Clerk Albert the language so she can send the letter to the court before May 20th, 2014. Clerk Albert suggests if no one can be reached in time, VLCT could be helpful.

Agenda Item #4 – 8:45 P.M. -- Z.A. Report: Center School Change of Use Appeal.

- Z.A. Storey reports she issued a change of use permit to Thomas Roetker who recently purchased the former Center School property to change it from a school to a private residence. On the 15th day following this, Geoff Wilson filed an appeal. The property sits on about a quarter acre of land, and Z.A. Storey does not believe it is non-conforming. An Engineer did a wastewater study based on the number of students who used the system, and decided that 2 bedrooms was appropriate, which was included on the permit. Mr. Wilson's appeal states: this is a non-conforming use lots and parcels; it is a small lot; and the location of the septic system in regards to his artesian water well. A wastewater permit is not required, because this is a clean slate, was in existence prior to 2006, and the use will not increase significantly.

- DRB member Bridges questions if there is any record of the septic system. Z.A. Storey said there is not, and she has recommended to both the Engineer and Mr. Roetker that this be done either by applying for a wastewater

permit, or getting a letter from the Engineering Firm. Chair Walrafen questions if the DRB has the authority to look into this. Clerk Albert reports that Wastewater is under the State's jurisdiction. However she has spoken to Mr. Wilson who told her the State said the wastewater was all right, but wanted to know the DRB's position. She informed him she could not tell him, but mentioned the permit would stand, without an appeal.

- Z.A. Storey reports because it is permitted use and not conditional use, there are no standards to follow. She reports Mr. Wilson is very upset about this. Clerk Albert suggested he contact a lawyer, but he was resistant to this because of cost.

- Z.A. Storey reports Mr. Roetker bought the property so his daughter could live there while attending Goddard. She has been staying at the property, but Z.A. Storey does not believe this can happen, since it is not yet considered a residence. His lawyer allowed him to purchase it, before the permit was approved. Can she live there while there is an appeal to the permit? Can they file for a temporary dwelling with a temporary use permit? Clerk Albert mentions VLCT as a resource for these questions, but suggests that she not issue a temporary use permit while there is an appeal. Everyone agrees with that.

Meeting Adjourned at 9:05 P.M.

- DRB member Bridges makes a **motion** to adjourn, DRB member Hogan seconds the motion and it passes unanimously.

Respectfully Submitted
Mary Lane
Administrative Assistant