

**Brentwood Planning Board
Minutes – August 4, 2011**

Members Present: Bruce Stevens, Chairman John Kennedy, Vice Chair
 Doug Brenner, Secretary Kevin Johnston
 Glenn Greenwood, Circuit Rider Planner

Chairman Stevens opened the meeting at 7:00

Minutes – Mail – Board Business

The manifest was signed.

Motion made by Kennedy, 2nd by Johnston to give St. Hilaire voting rights: all were in favor.

Motion made by Kennedy, 2nd by Johnston to approve the minutes of July 21st: all were in favor.

The Board is in receipt of a letter from the NH Dept of Safety, asking if Burke's on Rte 125, referenced by tax map 217.023, can hold an inspection station license.

Motion made by Kennedy, 2nd by Johnston that this is an approved use, and to authorize the chairman to sign the form: all were in favor.

At the Board's request Dan Musso of 149 Crawley Falls was present, along with residents Jim Johnson and Jim Berlo. Also present was Harriet Cady of Deerfield. The purpose of this meeting was to discuss Musso's non-compliance issues at his business referenced by tax map 217.002.

Stevens said the Selectmen sent Musso a letter requesting that he comply with his previously approved site plan, or meet with the PB to amend his plan. He said the structure on the site that is used for storage needs to be added to the site plan. He said they are here to discuss bringing the plan into compliance with what is actually going on at the site.

Cady said the last time she was here, parking along the side of the road was brought up, and she has asked the BOS for a survey of the road on three occasions, to be able to know where they actually have a right to say it is being parked on. Stevens said Musso had filed a site plan and provided the PB with a licensed surveyor's plan of his property. Stevens said Musso hired the surveyor, that his plan shows the land he owns, and if they thought he made an error, he could go back to that surveyor and ask him to amend this survey or hire a new surveyor. Stevens said it is Musso's responsibility. Cady said the March 20, 1997 PB minutes show that a conditional approval was given to the site plan, but the minutes didn't say 4 parking spaces, but said note on the plan that the site is in the shore land protection district, and to delineate where he can store vehicles. Cady read the portion of the conditional approval that said to delineate two areas as customer parking and show the other as customer overflow parking. She said there is nothing to say he can't have more than four vehicles. She said under state case law, they already show that a person with a legally registered vehicle can be there, so she disagrees with the PB findings. Stevens said those are the 4 parking spots Musso showed, and with the size of the site, he asked how many more would be reasonable, that this would be evaluated once they present an amended plan.

Cady asked if, as long as there are registered vehicles that don't belong to Musso that he is not repairing at that point, if they are customers coming in, does the PB want a site plan for vehicles that aren't even

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permanent vehicles there? Greenwood said the existing site plan indicated what parking is permitted and how it is to be used, that was agreed to by Musso, this is his proposal. This is all required by our ordinances.

Cady asked, under RSA 91A, for the complaint, any pictures, and any evidence that has been presented. St. Hilaire said the complaint was done by phone, and that earlier this year Greenwood drove by the site and counted 14 vehicles on the site. The selectmen would have the photos. Cady asked for the PB Rules of Procedure, saying they are required under state zoning and planning laws, and Greenwood said they have Rules of Procedure that were adopted about 18 years ago, that they are somewhere in the files. Cady said in Deerfield they will not accept any complaint unless in writing and she wants to see what the PB rules state. Stevens said they will look for them, but tonight they are here to talk about getting the plan in compliance, the whole objective is to help them get the plan into compliance and again said they are not saying they have to be restricted with the number of cars, but, just like anyone else in town, amend the plan if they want to have something different, bring that plan to the PB and they will treat it like any other amendment to a site plan.

Kevin Johnston said this needs to be done in a reasonable time, this has been going on for a long time. They are in violation of their site plan, and they can contest that if they want, but it will not be contested in these meetings. He said they can change the site plan, bring it to the Board to look at and be voted on. He said when they keep asking for different things, rules, etc, that is not going to change the PB from moving ahead with what they said they would do.

Regarding Rules of Procedure, Cady said the files are in the next room and the Right to Know law requires that if you have the information requested, they be produced immediately. St. Hilaire said she has five days to produce them, and Stevens said they will produce them, there is nothing to hide. Cady said she thinks she understands the Right to Know law, and Stevens said she may not understand the way they proceed in Brentwood, and Cady said she doesn't understand how Brentwood proceeds according to law. Cady said the PB has never approved a site plan for Dan Musso, stating that the minutes "completely" show that the PB did not approve it, but gave it a conditional approval, but never took a vote to approve it later. Stevens said the plat was signed and recorded at the registry and she said it needs a vote. Kennedy said they do not need to vote, once it is conditionally approved. Cady disagreed, saying the minutes clearly show the PB didn't approve it. St. Hilaire said there are minutes that state that the Board signed the plan. Greenwood said this can be settled in court, if it comes to that and to hash it out with all sorts of incriminations now accomplishes nothing. Kevin Johnston again said they need to amend their site plan or they will move ahead with the revocation. Stevens asked Cady to write down any requests for information, and the PB will get any information that is available. Kevin Johnston said they do not want to see this go on for another two or three years; again saying Musso is in violation of his site plan, and he either has to correct it, create a new one, or they will go ahead with revocation. Stevens said again the simplest thing to do is amend their site plan, that they will be judged by the same criteria that everybody complies with. He said they have gone as far as they can tonight, that they do need to move forward with the process. They were asked to come tonight to either show conformance to the existing plan or present a new plan, and Cady said they do not have a new plan to submit.

Stevens said they cannot keep going around and around, again saying they need to make some reasonable progress toward resolving the issues, or the PB will proceed with the revocation process. If they tell the PB tonight that they will engage an engineer and come up with an amended site plan, that would be one positive indication that they are moving forward in applying good faith in complying. If they feel this doesn't apply to them, the Board will have to consider revocation. They have received many notices and much discussion for at least the past two years about this. He said Musso's lot is grandfathered and allowed, even though it does

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not meet the minimum lot size of 120,000 square feet. Physical constraints of lots do suggest that not all uses are compatible, given the size of the lot. He suggested they show how many vehicles they feel they can put on this lot in a safe and orderly manner, and the PB will apply the same criteria to that application as they do to anybody else. Cady asked if the PB ever asked Musso how many of the vehicles belonged to him, and Stevens replied that was not the subject of discussion at this point. He said the site plan shows the number of spaces and they can't go any further tonight. If they think they can have more vehicles on the lot in a safe manner, he suggests they come in and show whatever number they feel reasonable, and again said they will apply the same criteria to that application as they do to anybody else. Cady said if they treat one person, and do not treat the whole town, they are starting to get into civil rights violations of one person. Stevens said if she has a civil rights violation she can pursue it, but this isn't the venue to do that. He said "our task, again, is to monitor site plans that are approved and to facilitate the adoption of new site plans". He said what they need to convey to them, and have, they can talk about Planning Board related issues. Brenner arrived at this time.

Cady provided a written request for minutes that would show where the PB ever voted to approve a site plan presented, with the additions and corrections, saying "it has not been done". Stevens said there is only one recorded site plan on record, and Cady said again it was never voted to be recorded. Stevens said Brentwood's procedure has always been that, once a conditional approval has been granted, the applicant is not required to come back to a publicly noticed meeting, the plan is brought in with the conditions on the plan, reviewed by Greenwood, and is signed and recorded. Cady said is how the PB has done it but said that is not according to law. Stevens said that is a Superior Court venue, and Cady agreed. She said "what you do will decide if this goes into court and we prove that it wasn't done correctly". She also requested to see the Rules of Procedure so she can be assured that this Board is following the procedure according to the law, and the PB has refused to get them. Stevens again said to put the requests in writing, and they will answer the questions and get them the information. Kevin Johnston said this has nothing to do with the site plan, any information that she wants has nothing to do with our rules and regulations as to whether that site plan is in compliance or not; she can ask all those questions at some hearing later on after the PB revokes it, but his contention is that she comes in with smoke screens, throws out a bunch more questions to delay and delay it. He said Cady is not helping Musso by not coming in with a plan or showing compliance. Cady said she does not know why the PB feels they have a legal plan, because she again said she is looking for the minutes that show her where it was voted. She said there is no point where the PB ever received the Mylar "to prove that you, in fact, saw that these things had been added to the plan". Kevin Johnston said "Do you understand English" and Jim Johnson yelled that that was out of line and Stevens asked Jim Johnson to sit down, and Jim Johnson yelled "no, you're an elected official and will not treat a citizen that is representing a fellow citizen here like that". Kevin Johnston apologized, then he said that he had said it three times already, as to what the PB wants to do. At this time Jim Johnson got angry, and said Kevin Johnston was condescending, saying "we had it when he was Selectman, when he was chairman" then said "Sir, you will regret that". Kennedy said he doesn't need to sit here and take that kind of guff, if he has something to say, sit down be polite about it. Stevens told Jim Johnson that was enough, if he has something to put on the record, put it on the record, but the personality stuff is out of it. Jim Johnson again said he was condescending and Stevens said that Kevin Johnston had apologized. Kevin Johnston said this does not change the point he was trying to make. Jim Johnson apologized to the rest of the board, saying he "shouldn't have snapped the way I did". A police officer arrived at this time.

Stevens told Cady they could clear the issue of how the plans are approved. He said only elected board members sign off on a plan, and their signature is an indication that they have reviewed the plan and conditions required before recording. Members may come in between meetings to sign the Mylar, they try

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not to wait to the next scheduled meeting, so that the applicant can move forward. Greenwood and St. Hilaire review the plan to be sure all the conditions have been met before having any signatures. He said members only sign off once the conditions have been met. He said the conditional approval has to be voted at a scheduled meeting, and that is how the process works. He said is trying to understand what she is asking for when she says the plan was not voted on. Cady said that, under the law, a Planning Board must act together at a posted meeting, and Stevens said that all decisions and all votes are taken at a public noticed meeting. Cady again said the signing of a document is a decision that the Board has made, and she wants to see where the Board made a decision, and together voted to sign the document. She said there are no minutes to show this Board did it in a legally posted meeting to approve it. Greenwood said her answer isn't going to be accomplished here, if she wants to make that argument in Superior Court, they are free to petition the Court for a decision. He said she is not going to accept any evidence we provide to her, and he is not interested in hearing her say it a second time, or a third time. Kennedy said that if the PB takes the attitude that she is right, that the PB erred when they told the DMV Musso ran a legal business there, which means he shouldn't have an inspection station license. Cady said Musso had the license before, and that cannot be revoked, and Kennedy said the PB got a questionnaire, and if the site plan is not a legal document, then the PB erred for replying to the State that it was legal.

Stevens said again that the focus of the Board is no different with them or anybody, but the PB wants the site in compliance by what is allowed by the recorded plan, or they want to see a new application, and we need a date set for this.

Motion made by Kevin Johnston, 2nd by Kennedy that, if they are not in compliance or have not made any substantial movement towards compliance by September 15, 2011, to hold a public hearing for the consideration of revocation on September 15th at 7:00 pm. Brenner asked if, because he came in late, did he miss anything where the issues in the letter were addressed, and members said no, and Stevens said the request was to either show that they were in compliance with the current plan, or come with a new submission for an amendment, and neither were done. Cady said that they believe they are in compliance.

Jim Johnson asked who made the complaint and was told that it was the Brentwood Fire Association. Their complaint was that the site was not in compliance. Stevens again said this plan needs to be in compliance. He said they will meet again on September 15th.

The above motion carried by unanimous vote. Stevens provided the hours that the PB office is open.

St. Hilaire told Cady she would have the written request for the Rules of Procedure, available Monday. With regards to Cady's second request for where the Board ever voted to approve a site plan for Dan Musso, it is the Board's position that that has been answered. Stevens said they have done as much as they can tonight, and said the Board appreciates them coming in this evening. Cady thanked the Board.

Stevens signed the letter to the DMV regarding Burke's inspection license. He also thanked the Brentwood Police officer and said they were all set.

Motion to adjourn at 7:45 pm made by Kennedy, 2nd by Johnston: all were in favor.

Respectfully Submitted,
Kathy St. Hilaire, Administrative Assistant, Brentwood Planning Board