

TOWN OF DURHAM
ZONING BOARD OF APPEALS

Regular Meeting Minutes
Thursday, July 23, 2009
Town Hall Meeting Room
REVISED

*Revisions appear in **bold, raised italics**.

Call to Order: The meeting was called to order at 7:30 PM by Chairman John Hogarth at the Durham Town Hall.

Roll Call: Members present: Chris Flanagan, David Heer, John Hogarth and Bill Joyce.
Alternates Present: None Staff: Trish Dynia

Seating of Alternates: None.

Approval of Agenda: *A motion was made by David Heer, seconded by Bill Joyce, to approve the agenda as written. The motion passed unanimously.*

Approval of Minutes: *A motion was made by David Heer, seconded by Chris Flanagan, to approve the May 14, 2009 minutes as written. The motion passed unanimously.*

Payment of Bills: *A motion was made by Bill Joyce, seconded by Chris Flanagan, to retroactively approve payment of a Middletown Press bill in the amount of \$854.27.*

Discussion: Chairman Hogarth explained that the Town's Finance Director, Mary Jane Malavasi, contacted him in July stating that the account was in arrears and the newspaper would not publish further legal notices until the account was brought up to date. Recording Secretary Trish Dynia added that the account was in arrears because the Commission had not been receiving bills in the mailbox and the Finance Director is looking into the matter procedurally within Town Hall.

The motion passed unanimously.

Public Session: None.

Miscellaneous: None

PUBLIC HEARING

Regional School District #13, Request for a 45' Maximum Height Variance from Section 05.02.01(A) of the Durham Zoning Regulations to Construct Four 80' High Athletic Field

Lighting Poles at 144 Pickett Lane, Coginchaug High School Campus: Chairman Hogarth read the call of the public hearing and invited the applicant to make a presentation.

Attorney Timothy Hollister of Shipman & Goodwin in Hartford, CT, spoke on behalf of the School District and introduced the following participants: Ron Melnick, District 13 Business Manager, Ted Fravel, sales representative from Musco Lighting, Dick Webb, Landscape Architect from Clough Harbor and Associates, and Bob Francis, District 13 Superintendent of Buildings and Grounds.

Attorney Hollister submitted materials to the Commission, including a single page preliminary lighting use schedule and booklet outlining the evening's presentation.

Mr. Webb reviewed a map showing an overview of the project site and entire campus, noting that the track and field complex is to remain in the same position but the track itself would be reconstructed. He then briefly reviewed where abutting landowners were located.

Mr. Webb next presented a map illustrating the area to be lit during evening activities. He noted the areas where lights are already in place in the basketball, tennis and little league areas. He then noted the four locations where they wish to install 80' poles to light the track and field facility. Each pole top assembly would contain 14 bulbs of 1500 watts each, for a total of 56 fixtures, as well as control features to direct lighting onto the field. The 1500 watt bulbs are shrouded metal *Halide (replaces haglires)*, which comply with dark sky requirements. The map shows the total illumination with full light on the field and minimal edge lighting in an area 290 feet from the nearest property line. He referred to the full light area as 50 foot candles, and the lowest light area as 1/10th of 1 foot candles.

Mr. Webb explained that years ago, standard fixtures installed on sports fields were much lower in height, but created lateral spill, interfered with site lines and did not evenly light the fields. Such conditions interfered with game play and created unsafe playing conditions.

The lighting area would be reduced on nights when the field is not in use but would be minimally lit for the many people who walk the track at night. The system is fully automatic and computer controlled off site. If there is a problem the lights can also be manually overridden at the field.

Rob Frances referred the Commission to the lighting schedule which represents potential lighting hours. Other organizations are allowed to use the field but must make a formal application to District 13. They would not have the ability to turn the lights on themselves. He emphasized that only he or his assistant would have access to the on and off-site control mechanisms. The computerized system also monitors track usage and any lighting problems which may occur.

Ted Fravel stated that in 2005 his company, Musco Lighting, came up with new technology to eliminate spill and glare and extend lamp life. The lighting mechanism uses 40% less fixtures and 40% less energy. Direct light from the high angle eliminates glare and produces consistency of light quality over a large area, whereas formerly standard fixtures on low poles reflect excess light into the sky. He also noted that his company adheres to stringent environmental codes for light pollution and sports fields represent 60% of their projects.

Attorney Hollister stated that he would like to “address the justification and hardship aspect of the request.” He explained that a maximum pole height of 35 feet is common for residential areas and that a higher light pole is justified because it is more practical for field users and less obtrusive to abutting neighbors.

John Hogarth asked if the site plan had been approved by Planning & Zoning. Attorney Hollister replied that they are scheduled to present the proposal to Inland Wetlands on August 10, 2009, and to Planning and Zoning on August 19, 2009. He also stated that ZBA variances must be addressed before going to Planning & Zoning.

Mr. Hogarth stated that perhaps Planning & Zoning could review the overall plan and defer the lighting to this Commission. Mr. Hollister replied that his understanding is that the sequence is Zoning Board of Appeals is first because PZ cannot approve a site plan which contains features specifically prohibited in their regulations.

Mr. Hogarth then asked if the applicants had contacted abutting land owners. Rob Francis replied that abutting neighbors had not been specifically contacted but there had been a number of meetings and presentations on the issue, the process had been very public, and there had not been anyone at the meetings who specifically identified themselves as abutters.

Chris Flanagan asked Attorney Hollister why lighting was needed in this area. Attorney Hollister replied that the lighting would allow the school district to extend the hours that the sports facility could be used and would provide safety for those users.

Mr. Flanagan noted that this would mean the use would expand. Mr. Melnick replied that it would allow for expansion of use. Mr. Frances added that currently early spring ball practice must be conducted in the gym since it gets dark early.

Mr. Flanagan stated that he had visited the Town Clerk vault the previous day and was there when the blue prints for Inland Wetlands arrived. His review of the maps revealed that the track elevation is 222 feet above sea level and the lights, if built as proposed, would bring them to 302 feet above sea level. He then asked if, since the town green is just over 200 above sea level, “Would I not still see these lights in the distance?” Mr. Fravel replied that only shorter poles would reflect light into the sky, and, the proposed fixtures would not glow obtrusively. He compared this to the phenomena of seeing a car in the distance, where you would see the headlights themselves but no lateral lighting.

Mr. Flanagan stated that he would be more comfortable appraising the project if Planning & Zoning approved it first. Attorney Hollister replied that Planning & Zoning does not have the authority to approve a project with 80 foot poles.

Mr. Fravel distributed demo photos from his company’s brochures showing how such lighting looks from a distance.

Mr. Flanagan asked what the procedure would be for pole and fixture maintenance. Mr. Fravel stated that the town would not incur any cost in this area because his company would come out on a regular basis with a lift to perform maintenance.

Chairman Hogarth asked if his company has ever installed shorter poles. Mr. Fravel replied that they have been asked to but have not done so. Mr. Webb added that geometry and field configuration determine appropriate height.

Mr. Hogarth stated that he had not attended any of the meetings where the project was discussed and wanted to know what neighbors had to say about the project. Attorney Hollister replied that no neighbors spoke on the matter as far as he knew. Mr. Melnick added that in 2005 the Little League presented a proposal to Planning & Zoning for two 60 foot and two 70 foot lights on their playing fields and the numerous pages of neighbor comments presented concerns regarding hours rather than scope of lighting.

Commission members wondered why this proposal, being also over the 35 foot height limit for lighting poles, did not come before the Zoning Board of Appeals. Attorney Hollister replied that they had looked into the matter also and found no record of a ZBA application.

Mr. Flanagan inquired about the size of the poles from base to top. Mr. Fravel replied that the bases were approximately 23 to 24 inches in diameter and tapered to 3 to 4 inches at the top.

David Heer inquired about Exhibit A, attached to the application, and referred to in the application under "Hardship". He noted that the first paragraph refers not only to the athletic field light poles but an additional variance for 60' for tennis court lights. Mr. Webb stated that this portion of the plan had been withdrawn.

Bill Joyce asked if the applicants knew what the median height of trees were in town, a concern he had because of Chris Flanagan's statements regarding elevations around town. Mr. Fravel replied that this question has been asked before in other towns, but that the overall answer is that tree height is not an issue. Mr. Francis added that there are some large oaks of approximately 60 feet in height near the Little League ball fields.

Bill Joyce inquired as to the location and number of other lights in the area, including emergency exit lights for the bleachers. Mr. Webb replied that there are two poles, each containing a single 1000 watt bulb to light the emergency egress from the bleachers. In addition, the walkway behind the grand stand contains a trail of lights progressing down the hill to the parking area. These are traditional lights of 35 feet or less which match the existing parking lot lights.

Mr. Heer expressed concerns that the neighbors had not been personally contacted and given a chance to comment on the project. He specifically mentioned neighbors on Fowler Avenue who had concerns with the PA system in a recent Planning & Zoning Proposal. Attorney Hollister replied that the PA system would be addressed at the Planning & Zoning Commission public hearing.

Mr. Heer noted that there is dedicated open space adjacent to the project and asked about impacts on that area. Attorney Hollister replied that the conservation areas are wetlands, one of which was manmade and has been determined to have no wildlife. If approved by Inland Wetlands, that area will be filled and an adjacent, more significant wetland area of greater habitat value will be protected with a conservation easement. He further noted that both areas lie beyond the 1/10th of one foot candle/minimal light area. Attorney Hollister also confirmed that the base of one of the poles is proposed to be very close to the wetland limit in the area they are proposing to fill.

John Corona of 17 Johns Way recommended that the Commission conduct a site visit of the property, and that balloons be flown in the four locations at the proposed height before voting on the variance because the proposed height is substantially higher than most of the properties in the area, including his own, which sits on a nearby hill.

Mr. Corona stated that it isn't the case that they can't use the facility without lighting and expressed concerns about the lighting schedule. He noted that the District 13 website contains a long list of organizations which may be queuing up to use this facility if it is lit at night. He asked under what circumstances groups would be allowed to use the facility, what the control would be and who would monitor the lighting. He asked why the tennis court lights were sufficient at 35' but the track lights were not.

He expressed concerns about how the dark sky lighting would work and noted that the light source could potentially be viewed from numerous points in town. He stated that it was not appropriate to assume that surrounding neighbors had no problems with the issue simply because they were not here tonight. He asked that the Commission continue its traditional practice of requiring the applicant to contact abutting neighbors to elicit their input and/or approval.

In response to the applicant's assertion that there would be no effect on the wetlands, Mr. Corona noted that they propose to fill 10,000 square feet of wetlands.

Mr. Corona was concerned that the application does not state a specific hardship and the activity is to take place in a residential, not an industrial zone. He compared the 80 foot height of the poles to two town halls or two telephone poles stacked one on top of the other. He warned that if this Commission were to grant the application, others will follow suit with proposals citing this as a precedent. Several years ago when cell phone towers were proposed in the Mica Hill Road area, residents opposed them citing the Plan of Conservation and Development goal to protect ridge tops and scenic vistas of Durham. "I don't think it's true that it cannot be done without the lighting and you should ask them about alternatives." Finally, Mr. Corona warned that if the project is not ultimately approved by PZ and this Commission has already approved the lighting, a refurbished track in the original footprint would not require PZ approval and could contain 80 foot lights.

Mr. Flanagan asked about the cost of the lighting. Attorney Hollister replied that he was not sure this question was within the Commission's purview, but deferred to Mr. Fravel, who stated that the cost depends primarily on installer fees and his company had not yet priced the project.

Bill Joyce replied that this seemed to be a misrepresentation on the applicant's part as the Commission was under the impression that Musco Lighting would be the contractor. Attorney Hollister noted that the term "sample lighting" appeared in numerous places in the booklet provided. He further suggested that the Commission attend the site walk on August 8th with IWA and PZ, at which time they would be flying four balloons at the height proposed.

Mr. Hollister then replied to several of Mr. Corona's statements, including the following: He disagreed that the lighting was not essential to the project, comparing it to telling someone they could have a car but could not drive it at night. As to use by other groups, they are required to apply through District 13 and not all requests are honored. The proposed lighting schedule is based on the best analysis they can provide. As to intrusive lighting impact, they are more intrusive at the traditional level of 35 ft.

Chris Flanagan asked if 35 foot lights would reflect up whether the field was natural or artificial. Ted Fravel replied that different track surfaces would reflect differently but that was something they took into consideration when designing the lights.

Mr. Hogarth noted that the applicants had admitted that if the lighting were approved the property would be utilized more. Rob Francis replied that as stated previously there is a formal process and not just anyone can go out and use the property and turn the lights on. Attorney Hollister added that there is no way to tell the exact number of people who might apply.

Commission members agreed to attend the August 8, 2009 site walk. Members will meet on site for the joint inspection with IWA and PZ.

A motion was made by Bill Joyce, seconded by David Heer, to continue the public hearing. The motion passed unanimously.

The Commission agreed to schedule a special meeting for Tuesday, August 18, 2009, to continue the public hearing and possibly vote prior to the Wednesday, August 19, 2009 PZ meeting.

Adjournment: *A motion was made by Bill Joyce, seconded by David Heer, to adjourn the meeting at 9:15 PM. The motion passed unanimously.*

Respectfully submitted,

Patricia Dynia
Recording Secretary

Cc: Town Clerk, Midstate Regional Planning Agency