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**TOWN OF DURHAM
ZONING BOARD OF APPEALS**

Special Meeting Minutes
Tuesday, August 18, 2009
Town Hall, Third Floor Meeting Room

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, Bill Joyce and Bill LaFlamme. Alternates Present: Mark Jungels and Bill Martin. Staff: Trish Dynia

Seating of Alternates: Mr. Hogarth noted that all five regular members were present, four of whom were present at the opening of the public hearing on July 23, 2009, and the fifth (Bill LaFlamme) had read the meeting transcript thoroughly. The two alternates were not seated but could participate in discussions.

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

Payment of Bills: *A motion was made by Chris Flanagan, seconded by Bill Joyce, to approve the following bill: P. Dynia, Secretarial Services, 5/14/09 to 8/18/09, \$165.00. The motion passed unanimously.*

Approval of Minutes: *A motion was made by Bill Joyce, seconded by Chris Flanagan, to approve the July 23, 2009 minutes with the following corrections: 1. Add at the end of the meeting that the Commission scheduled a special meeting to continue the public hearing on August 18, 2009, 2. Page 2, Paragraph 4, Line 6, change haglites to halide. The motion passed unanimously with Bill LaFlamme abstaining.*

Public Session: None.

A motion was made by Bill Joyce, seconded by Bill LaFlamme, to open the public hearing at 7:40 PM. The motion passed unanimously.

CONTINUATION OF 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 asked that the two members who attended the August 8, 2009 site walk share their observations. David Heer stated that when the balloons were hoisted to the 80 foot mark he was surprised by,

“How high they didn’t look,” and wondered if they had been measured properly. As the site walk continued he had the opportunity to view the balloons from several areas of the property and found that the balloons did not seem obtrusive, though he wondered how the lights themselves would have looked after dark.

Chris Flanagan agreed with Dave’s assessment, and added that since he too was skeptical about the height, he brought one of the balloons home in order to measure his own tree heights. He measured the line and found that the height had in fact been 80 feet. Bill Joyce asked how large the balloon was. Chris replied that the red balloon was 24” to 30”. Attorney Hollister stated that at one point on the site walk the balloons could be viewed in comparison to the 70 foot lights at the Little League field.

Attorney Hollister read into the record the letter from Superintendent of Schools Susan Viccaro , dated July 31, 2009, in which she informs abutting landowners of the lighting plan and encourages them to attend the August 18, 2009 meeting or write to the Zoning Board of Appeals to express their opinions of the project. Signed receipts from the property owners were attached to the letter.

In response to the Commission’s July request for a light spill diagram of lights at the allowed 35 feet, Landscape Architect Dick Webb explained that this was not achievable because the glaring vertical light could not be modeled in a two dimensional diagram. Mr. Webb attempted to explain the 35 foot effect utilizing the original diagrams presented in July and again explained the candle effect.

COMMISSIONER QUESTIONS

Chris Flanagan: Please explain what the yellow lines represent on this diagram. Dick Webb: The inner line represents ½ of one foot candle and the outer line represents 1/10th of one foot candle.

Bill Joyce: Why couldn’t the 35 foot lights spills be modeled? Mr. Webb: Because the light was turned up from spill to vertical. Mr. Webb noted that player safety is better served at 80 feet because a football does not enter into a dark, blind spot before reappearing again suddenly in a player’s faces.

David Heer: During the site walk it was noted that several units at the Mill Pond Run adult housing complex off of Main Street could be seen from the field. What would those residents’ view of the lights be? Ted Fravel, Musco Lighting: There is no direct view of the fixtures unless you are standing directly underneath them in the field.

Bill Joyce: Referring to the superintendent of school’ letter regarding primary use in spring and fall, Bill asked about winter use. Attorney Hollister: Due to cold weather from about mid-December to mid-March, it is not likely the fields would be lit and used in the evening, though it’s not etched in stone.

Bill Joyce asked for clarification on the stated hardship. Attorney Hollister referenced materials distributed at the July meeting, which indicate that application of the PZ regulations regarding height would cause safety and practical problems for athletes and practical difficulties (re: light spill) for residents in the area.

Bill Joyce Is there another way to light the field at night for walker safety other than with 80 foot poles? Mr. Webb: It could be done with twenty shorter polls around the track.

Chris Flanagan read a passage from the CT Bar Association Guide Book for Land Use regarding a 1946 CT case. Attorney Hollister replied that he could speak for ½ hour on the problems of the case sited and law which has evolved since 1946.

Bill Joyce: Regarding use of the track by individuals vs. for sporting events, each activity requires it's on level of lighting. Can you adjust that lighting per use. Attorney Hollister: Yes, we can. Bill Joyce: Eighty foot light poles for walkers is over-kill.

Mr. Hollister stated that the programs offered would change if the lights are denied but that for the board the question is have we presented evidence that the proposal meets 1 of 3 criteria/basis, and it has.

QUESTIONS FROM RESIDENTS

Karen Cheyney of 60 Guire Road stated that although she is an abutting land owner, she did not receive the letter from the Superintendent of Schools.

Dave Zemelsky of 54 Fowler Avenue stated that it shocked him how much money was being spent on experts when there are more important things than football for the school district to be concerned about. He asked what the ramifications of these lights would be for an abutter such as himself who ran a farming operation, specifically the lighting effect on plant growth cycles.

Karen Cheney noted that at each meeting she attends, the list of possible activities for the ball fields seems to get bigger and is concerned about that "list" intruding in her front yard and reducing property values.

Tye Zemelsky of 54 Fowler Avenue asked why the notification to abutters had been done so late and questioned the logic of having the public hearing during the summer when so many people are away and unable to express their concerns. She felt it was important for the abutting landowners to have been brought into the process earlier. John Hogarth replied that as soon as the ZBA found out the applicants had not notified abutting landowners (in July), the Commission insisted that they do so immediately, and it was done.

Attorney John Corona of 17 John's Way distributed copies of a Memorandum of Decision, from the Judicial District of Waterbury, dated November 5, 2008, David Dadonna Et Al v. Town of Watertown Et Al. In this decision, the court decided that the defendant's grounds for finding hardship were not legally sufficient because, "To establish a hardship under (S 806) an applicant must show not only that he is thwarted in a desired use of land, but also that he is being completely or almost completely deprived of the use of the value of the land." Mr. Corona noted that although the sited case was for the installation of a fifty foot wind turbine, the cases are similar in that not allowing the 80 foot lights does not completely or almost completely deprive use of the value of the land.

Mr. Corona added that in the town's Plan of Development, Section 1.1.2, a goal is to, "Maintain and enhance the livability, historic scale and context, and residential character of our Main Street Historic District, which is first and foremost a residential

neighborhood.” He stated that light trespass glare from non-residential municipal and school district buildings should be brought into compliance with this goal.

Mr. Corona further noted that the school district could have gone to PZ to amend the regulations regarding light structures but they had not.

John Stockdale of 93 Maiden Lane asked if there had been any complaints to the town regarding the 70 foot Little League lights and if there had been damage done to the crops on Fowler Avenue. Mr. Hollister replied that they were not aware of any problems of either nature. Mr. Stockdale stated that with all the money invested in the facilities by the towns it is a good idea to get the most use out of them. He compared banning the lights to telling people at the turn of the 20th century that they could drive their cars but not at night. He concluded by stating that he knows when something is going on at the fields, he hears children and bands playing, sees Korn School and tennis lights and it’s all part of living where he lives. “I don’t live in a cone, I live in a community,” he added.

Karen Cheyney asked about the feasibility of requiring bonds for the project. John Hogarth explained that bonding was under the purview of PZ.

Dave Zemelsky stated that he would have loved to have seen the balloons flying and that although the two commissioners who attended the site walk when they were flown did not find them obnoxious, Mr. Zemelsky noted that there is a big difference between flying balloons and erecting large towers containing lights.

School Athletic Director Ted Lombardo reviewed the sports schedules and demonstrated that the fields would be lit minimally or not at all during the winter and summer. In the spring Cuginchaug could host one or two track meets, and in the fall there could be a total of 8 evenings lit up for soccer games and perhaps 5 for football games.

Chris Flanagan asked if the track would be shoveled for winter walker. Mr. Lombardo replied that that has never been done.

Anne Cassady of 23R Guilford Road noted that if you drive down Pickett lane late in the evening the tennis lights are always on and no one is playing. She asked if the track lights would be turned off at the end of use. The answer from several areas of the room was yes, they would, using a computer, cell phone, etc, and only controlled by certain people.

Dave Zemelsky asked about the cost of installing these lights that would only be used a few evenings each year. Chairman Hogarth replied that cost is not the issue for ZBA.

In reference to the movie *Field of Dreams*, John Corona stated, “If you build it they will come,” in reference to building the lights and ending up with more people wanting to use the facility at night, thus raising the number of nights the fields would be lit, as estimated by Ted Lombardo above.

Ted Fravel of Musco Lighting responded to Dave Zemelsky's question regarding field lighting and plant growth on nearby farms. He noted that his company had worked in very sensitive farming areas in Iowa and other parts of the Midwest with no negative growth effects. He reiterated that his company adheres to International Dark Sky requirements and would not get involved if they couldn't meet the proposed foot candle level.

In response to Attorney Corona's reference to a movie, he stated that his company provided the lighting for the movie *Field of Dreams*. He added that this was a fairly easy project for his company since the lights are not very close to area homes. Also, it is his company's policy that if there are such problems, the company comes out to fix it, rather than subbing it out.

Attorney Hollister replied to Attorney Corona's mention of the Waterbury case by stating that there is no comparison between one windmill for one resident and safe lighting of sports fields in a school district. He added that the issue is not whether there will be lights, because the PZ regulations allow lighting. The issue is whether 35 foot lights can safely be used without light intrusion on players and neighbors.

Mark Jungels noted that Palmer Field football games in Middletown are over by 8:30 PM. He asked if there is any reason why the lights would be on after 9:00 PM in Durham after such games. Mr. Lombardo replied that there was no reason why they would be left on after that.

A group discussion ensued regarding the meaning of intrusive vs. ambient light, bulb size and glow. Attorney Hollister made the comparison of seeing lights on the ground from a plane. You can see the lights but they do not glow up at you.

A motion was made by Bill LaFlamme, seconded by Chris Flanagan, to close the public hearing at 9:00 PM.

Discussion: Chris Flanagan noted that once a public hearing commences it must be completed within 35 days and voted on within 65 days.

The motion to close the public hearing passed unanimously.

A motion was made David Heer, seconded by Bill LaFlamme, to approve a 45' maximum height variance from Section 05.02.01(A), to allow the installation of four 80' athletic poles, hardships, special conditions being as follows: 1. Light poles are permitted as-of-right by the Zoning Regulations, 05.02.01(A) but only to a maximum height of 35 feet. 2. For lighting of an athletic field, a maximum height of 35 feet is impractical and potentially unsafe. With lights at 35 feet or below, lights will not adequately or evenly illuminate the field, will shine off-site, and will potentially impede performance of field users by shining directly into their eyes laterally. 3. Installing lights at a higher elevation, outfitted with hoods/cutoffs, will provide better, more evenly-distributed light in the field; will protect abutting and neighboring uses and residences from light impacts; and will not interfere with sight-lines of users. 4. Height of installed lights, as

affecting field illumination and minimization of off-site impacts, are discussed in the specifications of an athletic field lighting manufacturer and a light spill diagram, Exhs. C and D attached. 5. Thus, the need for the height variance requested is a direct result of impracticality and adverse impacts resulting from the application of the dimensional standards of the existing regulations to the subject property.

Discussion: John Hogarth expressed concerns for the neighbors and setting a precedent. He added that the fields could be used without the lights.

Chris Flanagan noted that if the application is turned down the Commission would not be required to accept an alternative proposal for six months unless it chose to do so at its discretion. He added that the site walk impression was that the lights would have little impact on the neighborhood and precedent setting was not a danger because with this application, and going forward any similar applications, could be amended with reasonable conditions. Also, PZ would be able to put limitations on how late the lights could be lit.

Bill Joyce stated that though the lighting had been presented by Musco this evening, they may not end up as the contractor when the bidding process goes through. He expressed concerns regarding use of the lights in the evening during no leaf time. He then stated in the general direction of the project presenters, "If we deny this and you choose to put up 35 foot lights, then shame on you.

David Heer stated that after hearing all the comments tonight he was undecided and wished to defer voting until he heard what the public had to say at the PZ meeting the following night.

(The recording secretary clarified for the record that once the public hearing was closed there could be no more public input or testimony. The Commission members could discuss the application amongst themselves at meetings and ask for input from town staff.)

Bill LaFlamme stated that there is plenty of light pollution now on Pickett Lane in the evening, especially in the tennis court area. He said he would like a verbal statement from District 13 as to what, if any, groups outside the school would be allowed to use the proposed lighted fields.

Mark Jungels agreed that the fields would be used more if lit at night but did not believe they would be used and lit into the late evening hours.

Various members continued to express interest in hearing what the public had to say about the project at the following evening's PZ meeting.

(The recording secretary again clarified as above.)

Chairman Hogarth agreed and noted that the sole reason for having the special meeting tonight was in order to vote on the lights before PZ met and felt it would be irresponsible to push it back.

The motion failed 4 to 1 with Chris Flanagan voting in favor.

Adjournment: *A motion was made by Bill LaFlamme, seconded by Bill Joyce, to adjourn the meeting at 9:40 PM. The motion passed unanimously.*

Respectfully submitted,

Patricia Dynia
Recording Secretary

Cc: Town Clerk, Midstate Regional Planning Agency