

## **Minutes of the meeting of the TOCI Planning Board, June 21, 2012 at 7:15 at the Hall**

Present: Sam Birkett, Ernie Burgess, Louise Doughty, Mabel Doughty, Jane Frizzell, Charles Hall and Beth Howe (Chair)

Also present: Ron Tozier, CEO

1. Public hearing on an application for a minor site plan review for an LP gas storage and dispensing facility from Peter Pellerin, 180 North Road (Map I07 lot 146).

Beth explained to the audience that the hearing would be held first, followed by consideration of the findings of fact by the Board.

Peter Pellerin briefly presented his proposed project. He will be storing and selling LP gas, and water softener salt. We will also have a limited business in appliances. The site is heavily wooded. There is an existing 1.5 story barn with a concrete floor about 50 feet to the north of the existing house. The project involves locating a 1000 gal propane storage tank on a concrete slab 85 feet behind (to the east) of the barn. The tank will be surrounded by a wooden fence. In addition, 27 feet to the northeast of the tank there will be a storage area for smaller tanks to be filled. It will have an earth floor and will be surrounded by a five-foot earth berm. Since propane is heavier than air, any leakage from tanks in the storage area will be contained by this berm. The storage area will have a gate with a lock. There will be a motion-sensitive light mounted on the barn, shining on the 1000 gal tank.

The tank storage area is located in the 65 foot back setback. Peter said if there are problems with this, he would move it so that it is more than the 65 foot setback distance from the property line. The State requires propane storage tanks to be located at least 25 feet from property lines.

There will be a circular drive around the barn to the large tank and the tank storage area. This will allow propane trucks to reach both storage areas by driving directly through, without having to back up.

There will be no public access to either the large propane tank or the smaller tank storage area. Mr Pellerin will be the only person who fills tanks from the propane storage tank. He will generally fill large tanks at customers' homes from the propane truck, or will pick up and deliver smaller tanks. This means that the project will generate few visitors. In accord with the TOCI Zoning Ordinance, Section 420.1 there will be one parking space off the driveway for Mr. Pellerin who will be the sole employee.

Jane asked who the abutters surrounding the project are. Mr. Pellerin said that Mike and Shannon Smith are to the north, David and Susan Campbell, Kim Boehm and Jen Horner are behind.

Ron reported that after the hearing by the Board of Appeals, he had asked Shannon Smith whether she and Mike continued to oppose the project, as they had in the letter included in the packet. She said they did not – they had been incorrect in thinking that this proposal would

change the actual zoning of the Pellerin lot to a commercial lot. She understood that a special exception is not such a permanent change. There has been no formal response from the Campbells, but they talked with Mr. Pellerin about the proposal. Kim Boehm supports the proposal. Jen Horner who wrote two letters in opposition did not come to either hearing. Pellerin also explained that the Board of Adjustment and Appeals placed a condition on his special exception that he must return to them in five years for a renewal of the exception. This will allow abutters to report whether there have been any problems and have a say in the continuation of the use. Louise asked if the Planning Board should also have a 5-year review. Beth said we will consider that when we do the findings of fact and conditions of approval.

Jane asked about whether propane explodes easily. Pellerin said it does not. Ron added that since it is heavier than air and sinks, the berm or a curb would be an effective containment system. Once out of the tank, it would dissipate into the air.

Beth asked if there were any other questions from the members of the Board. There were none. She asked if there were any questions for the applicant or the Board from the audience. There were none. Beth closed the public hearing.

## 2. Consideration of findings of fact and conditions of approval for Peter Pellerin

Beth explained that there are draft findings of fact, since the Board had held another hearing on this project in April. The Board worked through the findings of fact, making changes in the draft for sections D, E, L, M, P, Q, R, T, and W. After each finding was read and discussed the Board voted on that finding. All the votes were unanimously in favor.

Beth then asked whether there were any conditions that needed to be added. Mabel moved, seconded by Louise to have a condition that Mr. Pellerin return for a review of the site plan in five years, after the Board of Appeals has considered the renewal of the special exception for the use. Jane asked why 5 years had been chosen. Pellerin answered that there had been a proposal in the Board of Adjustment for a 3 year review and another proposal for 8 years. So that Board had settled on a compromise of 5 years. He said it was a response to issues raised by the abutters. Ron said that the BOAA has to make a finding of fact about whether the special exception would reduce neighboring property values. He had argued that it would not, but there were members of the BOAA who thought it would and wanted to have the review. Jane asked whether there are any inspections by the State of such facilities. Pellerin said that there are random State inspections. Beth said that if there are problems with the facility, the neighbors can make complaints to our CEO as well. Ernie said that one member of the BOAA had felt particularly strongly about the property value issue. But Ernie said he is worried about unfair treatment of applicants – some are made to jump through hoops that others are not. Sam said she was not in favor of having a 5 year review. Louise and Charles said that it is useful to give people a chance to have their say in a public hearing.

Beth asked if there was more discussion. Seeing none she asked for the vote. The motion passed 4 in favor to two opposed.

Beth asked whether any members of the Board thought there should be a condition about not allowing the tank storage area to be in the back setback. She said that she and Ron had agreed

that the 1000 gal tank had to be considered a “structure” because it has a concrete base, similar to a patio. But they had thought that the storage area and its berm, which are made of earth, would not be a “structure”. However, Mr. Pellerin is quite willing to move the storage area in toward the barn so that it is not in the setback. She also explained that the proposal as it stands meets the State requirements for 25 foot setbacks for a propane storage facility. Louise moved and Ernie seconded that the earthen tank storage area be permitted to conform to the State, but not to the TOCI code on setbacks because it is not a “structure”. The motion passed unanimously.

Louise moved, seconded by Sam that the minor site plan for Island Energy be approved. Passed unanimously.

### 3. Zoning Enforcement

Ron reported that he had recently found several shoreland zoning violations on Hope Island. He said as background that, following up on Ernie’s complaint, he had been out to Hope in November with representatives of DEP and NRPA to inspect a road that might be too close to the shore and a stone retaining wall that had not been reviewed by the Planning Board. At that time DEP and NRPA did not consider the violations to be very significant, but the Planning Board should review them.

Now, in addition, a new road/path has been constructed in the 75 foot buffer zone, a concrete patio has been sited 40 feet from the water on the west side of the Island, and a concrete platform has been built on the southwest tip of Hope. Not only are impervious concrete surfaces not allowed within the 75 foot setback, but the movement of more than 10 cubic yards of materials to install the concrete should have been reviewed by the Planning Board.

Ron contacted Mr. Cacoulides to make an appointment for inspection to determine whether the possible new violations were actually in the 75 foot shoreland setback. He went to Hope on Sunday July 17 and did the measurements. The changes are in the 75 foot setback. He read the Notice of Violation to Mr. Cacoulides and told him that DEP particularly thought the road or path and the patio must be removed immediately and replaced with loamed surface. Since then Mrs. Cacoulides has reported that these changes have been made.

Ron also suggested to Mr. Cacoulides that he hire an engineer such as Barney Baker who specialized in work in the shoreland zone, to bring the issues that require review by the Planning Board such as extraction of earth materials, the movement of earth and the construction of stone retaining walls to the Board. Mrs. Cacoulides reported that they have contacted Baker.

Ernie said he was pretty sure that the concrete patio that has been built on the Southwest tip of the island is in the part of the island that belongs to Portland. He thinks that Mr. Cacoulides knows full well that what he is doing is supposed to be permitted and is not allowed in the Shoreland zone and expects that Chebeague will let him do it. Ernie thinks that the enforcement needs to be stronger.

Ron said that he thinks the TOCI has little leverage in these cases, so he tries not to be confrontational. In the case of these recent violations, discussion seems to be working. Mabel said she thought this was a reasonable approach.

Beth asked how the rock excavation noise has been and whether this issue may really be brought to the BOAA? Ron said that he has contacted Mr. Cacoulides repeatedly on the noise issue, as have some residents of Chebeague. He is well aware of the issue. In addition, a great deal of the uncompleted work on Hope has been completed. Louise said that the excavation noise has been less in recent weeks. He is hopeful that if the Cacoulides hire Barney Baker, they will bring the permitting issues to the BOAA and the Planning Board.

Beth asked the Board whether she should (1) work this summer on a nuisance ordinance that would directly address the noise issue, and (2) take that issue to the Selectmen. There was discussion about developing a nuisance ordinance versus strengthening the mineral extraction section of the Zoning Ordinance. Sam suggested doing both. She was encouraged to explore the way a nuisance ordinance could be constructed. But it is important to understand that any new ordinance would apply town-wide and may not be accepted by Town Meeting. Since work on Hope, in particular, may be slowing down, the salience of the issue in the community may go down. This may not be the time to take the issue to the Board of Selectmen.

Respectfully submitted,

Beth Howe