

HAMILTON PLANNING BOARD  
MINUTES OF MEETING  
December 20, 2016

Members Present: Peter Clark, Ed Howard, Jeff Melick, Rick Mitchell, Bill Olson, Brian Stein, and Claudia Woods

Associate Members Present: Richard Boroff

Planning Director: Patrick Reffett

This meeting was called to order at 7:04 pm.

434 Asbury St., Public Hearing Closed – Board Preparation of the Decision

Patrick Reffett reviewed the public hearing process and noted the fine tuning of items such as the generator testing hours (number 10) on the decision list. Discussion ensued regarding drawings and specifications embedded in number 1 of the Decision. Claudia Woods asked about the lease agreement, to which Mr. Reffett said that it was proprietary and only available voluntarily. Jeff Melick made minor changes to the approval which reflected back to the plans. Ed Howard recalled that at the CPC meeting, Tom Catalano (Chairman of the CPC and Historic District Commission) said all cell towers sites needed to go before the Historic District Commission even if the tower was not proposed in the Historic District. Mr. Reffett would follow up. Mr. Reffett disagreed with the concept, unless the towers were in the Historic District. Ms. Woods asked about announcement signs, to which Mr. Reffett responded that the signs would include the responsible parties.

Motion made by Rick Mitchell that the Planning Board approve the Communication Tower Special Permit Petition by Blue Sky Towers, LLC, in accordance with MGL 40A, Section 11 and the Hamilton Zoning By-law Section 6 J, Communication Towers and Communication Antennae and Facilities pursuant to the Planning Board Decision as amended.

Seconded by Claudia Woods.

Vote: Unanimous in favor.

227 Willow St. Project – Status Review

Patrick Reffett updated the Board regarding the construction of the building. The Planning Board had requested that the Building Commissioner issue a Cease and Desist. Town Counsel and the Building Commissioner reviewed the project-bases on which the Board sought a Cease and Desist. The Building Commissioner declined to issue a Cease and Desist and concluded that what was built appeared to fit the letter of the By-law and wrote a letter to the Board that addressed the points within the Planning Board letter to the Building Commissioner to that effect.

Jeff Melick noted that the drawings should be available as the approval was based on the drawings. The elevator shaft was constructed, which was higher than anything the Board thought they were approving. Mr. Melick requested that Town Counsel and the Building

Commissioner assist the Board so they could understand the legal opinion. Mr. Melick wanted the Planning Board to mediate the situation instead of going to the ZBA.

Town Counsel Donna Brewer said the Cease and Desist request letter did not specify what the Planning Board had a problem with from the Zoning By-law perspective. So the response was limited to asking if the fact that the elevator shaft constituted a mechanical penthouse or other structure that would be normally found above the roof and was not set-aside for human occupancy. ~~That was the scope of the investigation, according to Ms. Brewer who~~ continued stated that it was hard for her to understand what the elevator shaft would be for other than mechanical equipment and what was above the roof in the WSOD.

Bill Olson asked if the elevator stopped at the roof level and Donna Brewer responded that she didn't know. Mr. Olson added that the Board needed to understand what was happening between the heights of 41' and 56' and thought it would be helpful to have a plan to show what was happening in that area.

Project Owner Michael Pallazola said he built exactly what was discussed in several Planning Board meetings including a site walk and his notes from Planning Board meetings indicated the elevator. Mr. Pallazola said he was required by State law to have an elevator. The Planning Board designed the building and after many meetings and many revisions from the Planning Board, the plan evolved, according to Mr. Pallazola. Mr. Pallazola said his full set of plans were submitted to the Building Department and were fully reviewed ~~with~~ when a Building Permit issued. The elevator issue arose in October after it was constructed. According to Mr. Pallazola, he was doing exactly what the Planning Board had asked him to do during the permitting process.

Jeff Melick said the drawings did not show the elevator shaft with a big tower when the Planning Board voted for the plans. Mr. Melick said he had not approved of the elevator tower. Michael Pallazola said the tower was unattractive now because it was not completed. The mansard roof would cover more of the elevator shaft. Brian Stein said the problem was not the attractiveness, but the problem was with what was approved and the elevator shaft was not on the elevation drawings. Mr. Pallazola said he knew it was going to be there and was not trying to hide it. In his professional career, he has never brought a full set of documents to a Planning Board during the permitting process as that was not the customary process since mechanical systems are not fully designed at that preliminary point. Mr. Pallazola said the By-law gave him leeway for mechanical equipment above the roof. Bill Olson said the By-law did not describe occupiable space above the roof as would occur with an elevator stop at the roof.

Jeff Melick repeated that the plans that were submitted did not have the elevator shown above the roof and that he was worried about the visual impact to the Town. The Board's responsibility to the Town was that whatever was approved, be built. Michael Pallazola said the three towers were structural components to the building and the Planning Board could not discuss if they were

too tall or not with respect to the Willow Street Overlay District bylaw. Brian Stein said that alone should have been enough reason to include them on the plans submitted to the Planning Board. The two stair towers were included but the structural component should have been shown. It was on the plan, but not shown on the elevation. The towers accomplished the purpose they were intended to serve and were not for human occupancy, according to Mr. Pallazola. Mr. Stein stated that the roof deck was built so people would go up onto it and that originally there was a spiral stair to the roof deck.

Michael Pallazola said originally there was an open courtyard in the middle, but no one liked the flat deck, so a mansard roof was proposed, then the Board didn't like the materials, so natural material planting trays for a green roof was proposed by the Planning Board. There was a need to get equipment on and off the roof so that was why the elevator was there. Richard Boroff asked if the only the reason for access to the green roof was for mechanical access or for leisure. In response to Mr. Pallazola's question if Brian Stein, as a practicing architect drew rooftop equipment for a Planning Board submittal, Mr. Stein responded no, but an elevator shaft, yes, it absolutely would have been included.

Peter Clark asked Patrick Reffett to read the decision because he recalled that the decision was based on the plans that indicated 41' and now there was a height of 56'. Michael Pallazola said the By-law illustrated what could be done above the 41' Mr. Clark recalled that during the WSOD passage, the thought was about chimneys but no one thought of elevator shafts. No one saw an elevator landing on the fourth floor and that was not at all what the Board saw in the cross sections presented. Claudia Woods asked if there were mechanicals below the building and up on top. Mr. Pallazola said they are 14'8" above the last floor stop or above the permitted fourth floor. The roof deck was at 41'. In response to Ms. Woods' question if the elevator did not open on the roof deck, how tall would it be, Mr. Pallazola responded that the elevator tower would be 5'5" above the deck. Mr. Clark added that he believed that was what was presented and approved. Mr. Pallazola said the By-laws gave the Planning Board sole discretion over the height. Ms. Woods responded that the Board granted a waiver for the height, which was 35' to 41' and wondered why it was now 57'.

Michael Pallazola said it was neither the Board's nor his fault but the evolution of the building and continued that if the By-laws allowed him to do it legally and if the Board didn't like the result, the By-laws needed to be changed. If the By-law said no structure should be built above the Planning Board's approved height, it would not be an issue, but now it was an issue because the construction was in progress, according to Mr. Pallazola. Bill Olson said he didn't know what was in the space. Jeff Melick recalled Mr. Pallazola talking about a roof deck for people to enjoy so it should be taken out of the maintenance category.

Brian Stein returned to the legality of By-law interpretation and said this was a Special Permit with a waiver for the extra height. Mr. Stein said the applicant could have erected four of these towers with 30 flagpoles but that was not the spirit of the By-law. Mr. Stein asked Town

Counsel, since the drawings did not show the elevator on the Special Permit plans, what effect would the Special Permit decision have on heights that were exceeded. Jeff Melick said it did not apply with the By-law because the plans did not show the tower. Mr. Melick questioned if it was a mechanical penthouse. Michael Pallazola said a portion was a mechanical penthouse. Mr. Pallazola said it was not clear because part of his sales pitch was that the roof area would open to the public but Peter Clark said the plan showed a spiral staircase. Mr. Pallazola responded that ADA compliancy would end the discussion. Discussion ensued about whether the deck was open to the public in which case, ADA would apply. Mr. Melick asked if it was open to public or friends. Mr. Pallazola said the elevator would stop at all landings but he was constructing the elevator to service the components of the roof as the By-law said he could.

According to Michael Pallazola, air handlers for mechanical equipment would need to access the roof once a year. A boiler, hot water tank, electrical panel, and planting trays would be on the roof as well. Snow would need to be shoveled off. Richard Boroff added that snow blowers would need to be able to get up there.

Jeff Melick asked Donna Brewer her opinion based on use and omission of showing the elevator shaft on the drawings. If Town Counsel thought the elevator shaft was legally there, it would be important. Ms. Brewer said she looked at the By-law regarding the height requirement for everything above the roof height. The Planning Board had waived the roof height to 41' but WSOD did not set a height restriction for ~~anything~~ many items above the roof. Ms. Brewer thought it was something to keep in mind as the Board goes through the ZBL changes. Ms. Brewer said the question becomes a fact and law mixed question: Does the elevator shaft stop at the roof level ~~for~~ become something that was devoted to human occupancy, which would be something that had not been looked at before. Ms. Brewer said elevators were certified to see if they work but not for occupancy. If it wasn't for human occupancy, Ms. Brewer thought the elevator shaft complied with that portion of the Zoning By-law. Ms. Brewer questioned if the applicant misrepresented to the Board by failing to present the elevator shaft at above 41'.

Donna Brewer said while she had not been asked the question, after talking in general, it was not common to show that kind of detail for Planning Board submissions, but if that was not true as a matter of fact, there was a problem. Ms. Brewer thought it was a ~~Construction~~ Contractor or Architect question, not a legal question. Jeff Melick asked if construction structures were always included to which, Bill Olson said not every vent would be shown, but structural elements such as elevators especially those that hit the exterior wall should be shown on an elevation. Mr. Melick asked to take a step back and have Ms. Brewer review the three questions. Ms. Brewer said she needed factual information from the Building Commissioner and the Planning Director. Ms. Brewer suggested submitting a new Cease and Desist request based on it being a structural element not shown on the plan and that would be the basis for stopping construction.

Bill Olson wanted to see a rendering of the building with the shaft illustrated and suggested the applicant reapply for another Special Permit so as to set precedent. Rick Mitchell wondered if

the Building Commissioner had seen the approved rendering and if he thought it was substantially different. Charlie Brett responded that according to the By-law, it was what was allowed, but dressed up. Brian Stein said a roof deck plan that had an elevator was never shown, which was a key problem for him. If it were on the plan, it would have been obvious that the shaft was higher than shown. Mr. Stein added that it was not just an elevator shaft but a vestibule for the roof. Charlie Brett asked if it could be modified to meet the satisfaction of the Board. Michael Pallazola said when the mansard roof was constructed, it wouldn't be an eyesore that it was currently.

Jeff Melick stated that the Cease and Desist would stop construction and if the Board insisted on it being torn down, any work completed would be a waste of Michael Pallazola's money. The Board would provide Town Counsel with the rendering and plans used during permitting that did not include anything above the roof line as well as the current design drawings, which included the elevator but was not part of the submittal documents. Brian Stein said there were two vestibules, stairs, storage, and the elevator shaft on the roof.

According to Donna Brewer, there were two avenues on the legal side. If the Board wanted to pursue the Cease and Desist and go to the ZBA, they would need to do it by January 17, 2017, which was the deadline in the statute (30 days) for when the Board could appeal a declination of a Cease and Desist request. If the Board was looking for some kind of amendment to the Special Permit, then they needed to go through the public hearing process including notification. Ms. Brewer said if the Board wanted to pursue the Building Inspector's refusal to issue a Cease and Desist, their only recourse would be to go to the ZBA. Otherwise the Board could try to work something out with Mr. Pallazola to modify the drawings to somehow solve the problem and not go down the Cease and Desist ~~direction~~ route, but there would be a need for a public hearing to modify the Special Permit. Ms. Brewer and Claudia Woods agreed that the Board could request a new Cease and Desist that specifically stated that this was in violation, which would not need to be done by January 17, 2017.

Jeff Melick disagreed that the original request for Cease and Desist request was unclear. Paragraph 1 stated it was a mechanical penthouse, but Ms. Brewer responded that what she was looking at was the second phrase, whether it was devoted to human occupancy and thus a violation of the Special Permit. Charlie Brett would have 14 days to respond to a new Cease and Desist request. Peter Clark said the section drawing was entirely different and that it looked like a building on the base of the roof, which made it appear like a fifth floor with several other rooms making it completely out of compliance with the Special Permit. Mr. Clark wanted to go with the second option and have another hearing.

In response to Rick Mitchell's question if the Board had the authority to have the applicant modify the construction if Donna Brewer opined that the construction was different, Ms. Brewer said the statute indicated that if the Board sought enforcement of a decision, they would have to go through the administrative process. The process included requesting a Cease and Desist. The

applicant would then decide if he would abide by the Cease and Desist or sue the Town to enforce the Cease and Desist. The ZBA would either agree with you or with Charlie Brett, the applicant would either abide by the ZBA decision or it would be appealed. The statute says the Board must go through the administrative process. If the applicant voluntarily agreed to talk with the Planning Board about modifying the decision, the Board wouldn't need to go through the Cease and Desist process, but would go through the standard process to modify the Special Permit via a public hearing.

Rick Mitchell said he would prefer to try the modification route. Jeff Melick was concerned that the approval was not even close to what was proposed and citizens were concerned about the height. Mr. Melick was also concerned about setting precedent by allowing people to construct what was not approved based on their understanding of what the Board was agreeing to. The By-law was the problem and needed to be rewritten, according to Michael Pallazola. Mr. Pallazola stated that the Board and he needed to come together to figure out what to do because he would guarantee 100% that the structure would not come down. Mr. Pallazola said if the Board proved he was not using the elevator shaft for its intended purpose, he would fall back on the mechanical penthouse and not have the elevator go through the roof, but would stop it at the fourth floor. According to Mr. Pallazola, he would put a floor in there and everything would be a mechanical penthouse with boilers, etc. in it, however, the structure would stay there. Mr. Palazola hoped his solution did not sound threatening.

Jeff Melick said he did not consider Mr. Pallazola's comments to be threatening, but useful information with intentions to protect Mr. Pallazola's investment. Mr. Melick suggested taking no action and letting Donna Brewer return with her opinions. Claudia Woods felt uncomfortable letting the applicant go ahead to spend money until the Board met again. Rick Mitchell said it was helpful that Michael Pallazola made the comments that he would cut it off at the fourth floor and turn it into a mechanical room but the structure was not coming down. Mr. Mitchell thought it was a creative solution to turn the elevator shaft into a mechanical room exempt from the limitations that the Board was trying to engage. Claudia Woods added that the height would still be there. Donna Brewer defined the problem as follows: Does the project, as currently constructed, violate the intent of the Board's original approval as a basis of understanding? Mr. Melick suggested that turning it into a mechanical room could be the applicant's "Get out of jail card."

Michael Pallazola responded to Claudia Woods' concern about his spending future money on the project. Mr. Pallazola recalled that he had already purchased the elevator in October and had to pay three payments, so the money had already been spent. Mr. Pallazola said he paid the payments after the Building Commissioner had looked it over and said ok. Mr. Pallazola had planned to occupy the building in May with prospective tenants already in line. Mr. Pallazola respectfully requested that the Board do something to get the lead ball over his head removed.

Jeff Melick suggested the Board wait for Donna Brewer's opinion and wait until the next meeting. Mr. Melick appreciated the candor of Mr. Pallazola's comments and hoped that he understood where the Board was coming from because the elevator shaft was not something that was disclosed on the drawings. Mr. Melick considered Brian Stein's history of making those disclosures on drawings and added that if Mr. Pallazola had put the structures on the drawings, he would not have the problem he was having. Mr. Pallazola said he submitted the plans and obtained a building permit. Mr. Melick said he was referring to the permit process to which Brian Stein added that if he knew it was going on the building, it should have shown on the plan.

Donna Brewer defined her responsibility to determine the following questions: Was-If the elevator shaft was devoted to human occupancy, should Mr. Pallazola have shown the elevator shaft on the drawing, was the failure to show it on the drawings a violation of the permit approval process, and can the elevator shaft be converted to a mechanical penthouse and remain at its current height to comply with the By-law? Bill Olson asked if he would be willing to work with the Board and Mr. Pallazola responded yes.

Mr. Melick asked if Charlie Brett would attend the next meeting. Mr. Brett suggested that he would be happy to come and be a part of decisions in the future to iron details out with no gray area because he did not intend to get Mr. Pallazola in a mess and he did not believe Mr. Pallazola tried to pull anything over on the Town. Mr. Brett said he thought the plan was clear but could see where the board would have concerns.

Rosemary Kennedy wanted to bring up another issue regarding the Special Permit. Ms. Kennedy was not sure when construction began but the Special Permit expired on September 24, 2015. In response to when the construction began, Mr. Brett said it started in July. Mr. Pallazola said he had a foundation permit in July and continued that there was drainage and utility work before the expiration date. Patrick Reffett said he had previously discussed the concern and gave Ms. Kennedy the information about when the site work had begun which was clearly within the permit period. Ms. Kennedy responded that that was not an answer and wanted to know when the construction commenced. Ms. Kennedy said the commencement was nebulous and citizens were concerned about the differing opinions as to when the construction began. Jeff Melick asked Michael Pallazola to provide evidence of when work commenced. Mr. Pallazola agreed.

#### 650 Asbury St. Site Plan Review for the Gravel Parking Lot – Decision Preparation

Patrick Reffett requested an extension until February 7, 2017. Jeff Melick said as an aside that he had looked at what the parking lot would be and the view from the back was extensive. Mr. Melick objected to the parking lot as proposed. Mr. Melick said that maybe the Town's goals for using the property were too aggressive by using the house and both barns. Mr. Melick thought that the parking lot was an eyesore and suggested maybe raising a barn and putting the parking lot there. Peter Clark added that the Planning Board was putting the cart before the horse. Patrick Reffett said the RFP was out and anyone who responded to it would need parking.

### Cottage By-law Presentation

Claudia Woods and Bill Olson distributed a document about smart growth design considerations. Protecting community character, developing where there was infrastructure, protecting open space and resources, and adopting zoning that provided incentives for developers to choose less consumptive land were ways to encourage smart growth. Ms. Woods and Mr. Olson looked at the inventory of what Hamilton housing really was and what they found was last year 86 properties were sold with over half being sold for between \$300,000 and \$600,000. They then looked at the number of housing units and more than half of the housing was selling for under \$500,000. Ms. Woods said she thought that was important point because Bill Wheaton's presentation showed the breakpoint of when a home paid for itself in taxes being \$517,000. Rick Mitchell said accepting Bill Wheaton's numbers would be a mistake.

Claudia Woods said she and Bill Olson looked at the number of housing units and more than half were under \$500,000 in the Town of Hamilton so when the Board said the Town needed housing of \$400,000 to \$500,000 maybe the Town didn't. Ms. Woods wondered if the Town needed houses that sold at \$287,000 and over \$700,000 which she said would be important to have this number in mind before the Town looked for a developer to build \$400,000 to \$500,000 houses. At under \$300,000, homes were not affordable but were starter homes. Ms. Woods said she was surprised that there were so many at the lower end.

Claudia Woods referred to Planned Unit Development (PUD) and asked the Board to look at it. Bill Olson said he looked at Cluster By-laws and talked about the objectives and goals to determine what the Board wanted to accomplish rather than By-law language. Looking at the housing stock and then asking what the Board's goals were, be they lower taxes, get more houses for seniors or starter houses for young families, or affordable housing. The Board needed to determine what they wanted to get before they went to the Zoning By-law. Once the Board looked at why they were doing this, then they could determine how, such as Cluster, PUD, Cottage, McMansions or single family developments. The last thing that Ms. Woods and Mr. Olson looked at was where the appropriate locations for the types of development would occur.

Claudia Woods described that the idea was that this was a New England village-scape and the preservation of town character was important. Keeping the village downtown with rural outside was key to not encouraging sprawl. Mr. Olson and Ms. Woods wondered how could the Town expand the village sense in Hamilton and determine the density as appropriate to maintain the character of the Town. Ms. Woods questioned how would the Planning Board locate the high density development, near the downtown and near the transportation and how would the Board provide the affordable units within that context. The Board also needed to determine how they would decide how many housing units (annually, five year, based on infrastructure) should be provided and how to offer incentives to developers for using less space to build more efficiently and still make money. Ms. Woods and Mr. Olson talked about amending the OSFPD, Great Estates Bylaw, design standards, and setbacks. The Board needed to analyze the information before they did any Cluster, Cottage, or PUD, according to Ms. Woods.



Bill Olson said the Lakeview Cottage By-law was in the package and was the best of the ones found. Mr. Olson said some were very general and some quite specific. Mr. Olson said he and Claudia Woods had looked at the WSOD to determine how do create flexibility without someone finding a loophole. Ms. Woods wondered if the Board should designate districts or regions where Cottage Zoning might take place rather than a larger PUD. The Patton Ridge property was all the same so Ms. Woods wondered if the Board should prefer a mix of housing with some three bedrooms and some one bedroom creating a variety with the development. Mr. Olson suggested changing the level of trim and detail because the Patton Ridge development had no character, in his opinion. Ms. Woods said she had met with Architect, Doug Trees to look at Cottage Housing to satisfy affordability.

Claudia Woods wanted to look at Zoning By-law changes that could be effectively done, which were the Cottage Zoning and Cluster and wondered why the Cluster By-law didn't work. Bill Olson said the Great Estate By-law didn't work because of the commercial aspect, but the Cluster wasn't considered.

There were ten framing questions and once the answers were determined, the various proposals of Cluster and Cottage By-laws could solve the problems. Bill Olson said this was an opportunity to discuss the questions, not solve the answers. Claudia Woods asked that the Board look at the material provided. The Lakewood Cottage Zoning would be worth looking at for Hamilton. Rick Mitchell wanted to look at key dates with Town Meeting and the Warrant Hearing being set for the first week of March.

Doug Trees showed housing of 1,000 sf homes with two bedroom units facing south with private courtyards in one story houses (age restriction appropriate). Mr. Trees proposed an 18' one way road to serve entrances. Cottage meant reducing the width with a 16' plan rather the Patton Ridge 24' plan. Mr. Trees compared a proposed plan for Cottage Housing versus affordable housing for 560 Bay Road. Bill Olson defined Cottage Housing as having a 1,000 sf house sited around a common green space with streets and garages in the back.

The construction costs including a carport would be \$310,000 without site development on a town owned piece of land, which could make the units affordable if the Town had free land. On a \$100,000 piece of land including site development, the cost would increase to \$500,000 or in the case of Patton Ridge, \$600,000. Mr. Trees reiterated that half of the Town had an assessed value of \$400,000. Gordon Conwell and Asbury Grove had affordable housing and school costs were an issue, all of which needed to be considered about affordable housing. Mr. Trees suggested doing something controlled or there would be 140 unfriendly units at Longmeadow. 14 units a year were required to stay in safe harbor.

Doug Trees said he made a presentation to the Affordable Housing Trust who were trying to find a site to work. Mr. Trees said the site to look at would utilize smart zoning in the downtown area

including the police and fire station creating a window of protection. According to Mr. Trees, 40R, an overlay district within ½ mile of the train station, which covered the downtown area, would be smart zoning. Sites included the downtown area, police station, Willow St, (Dodge Tree and Lamson), Mac Shoe, and Myopia schooling field which connected to Patton Park. Mr. Trees believed there were possibilities where the State encouraged the Town to do high density and age restricted housing. According to Mr. Trees, adding age restricted units to the COA building was a perfect solution and could get the Town off the hit list for four years.

Doug Trees proposed the Board present a 40R overlay zoning district for the Town owned site at the COA site for Spring Town Meeting. Mr. Trees said as the State was encouraging this type of zoning, funds were available. Projects would be approved as a matter of right rather than the comprehensive permit of 40B.

Doug Trees suggested using Cottage Zoning as affordable housing. Mr. Trees recalled that the Inclusionary Zoning By-law provided affordable units after the construction of ten built units but the Zoning By-law should expect funds of 1/10<sup>th</sup> of a unit for every new unit that was built. Every new single family house would have a tax that went into the affordable kitty.

434 Asbury St. Special Permit

Patrick Reffett returned with the Decision for 434 Asbury St., Blue Sky Towers Cell Tower and the Board signed the amended document.

Motion to adjourn made by Claudia Woods.  
Seconded by Rick Mitchell.  
Vote Unanimous to adjourn at 10:10 pm.

Prepared by:

\_\_\_\_\_  
Marcie Ricker

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Date