

NORTH ATTLEBOROUGH PLANNING BOARD
REGULAR MONTHLY MEETING
THURSDAY, FEBRUARY 1, 2007

Board members Joan Marchitto, Richard Houle, Christopher Sweet and Raymond Payson-chairman. Donald Cerrone arrived at 6:35 P.M.

Request for Zoning Boundary Determination: Tilton & Associates (South Washington St./Old Post Rd);

Jay Talerman, Representing Mr. Clemmy Boch Enterprises as well as providing some council to Tilton. You probably have in your file a letter I drafted on this matter.

Mr. Cerrone, Last week.

Mr. Talerman, Quick opinion as to what your zoning by-laws have to say about the map my read of the information to date on that.

Glen Ofcarcik-Tilton & Associates, All the information was submitted last meeting in addition of Jay's letter. We submitted additional colored copies of the zoning map explained the reasoning why we're here today for the determination. Basically focuses where the zoning line as was pointed out the zoning start intersection South Washington and Old Post runs downs come across here two prior rulings by the planning board, which clarifies the location of the zone line to the east then follows the rear property line of properties as was said in the 1969 adoption. Everyone is in agreement until we to get to this point. Then question was as we go from this point back to Old Post Rd... (inaudible) planning board is that this line is the zoning line that is currently depicted on the colored zoning map, which is on file in the town, in your planning office, building dept. office that is the map. Some mention was made of prior changes to the zoning map we acknowledge that was changed in 1970 obviously it was changed in May 1970 of the current map dated 2005. The one I bought November 6th. again shows the line as depicted in the color blow up that I submitted last week.

Mr. Talerman, I think it's difficult to read from that map exactly where it is, which is why Glen provided the blow up that he provided last week.

Mr. Sweet, Can I just mention something that was pointed out to us? It says on this map clearly it says the document is intended for Town of North Attleboro Planning and Analysis purposes only nothing to do with zoning.

Mr. Talerman, The zoning by-laws however refer to this as the operative document for determination. I don't think we're here to say whether or not the map accurately reflects foot for foot. What may have happen in 1969, 88, 1997 or otherwise just that we're looking for clarification because the zoning by-laws refer and rely on the map. I would not be surprised if there were maps that showed some slightly different jogs/jags, zigs and zags in that area but the zoning by-laws reference the zoning map as amended and this is the zoning map as amended. We're just looking for some clarity here. We don't want to go far down the road in any kind of site planning and be stuck this is the time to resolve it now. It strikes me that we rely on the map because if I had to go to the building dept. today and get building permit they have to follow the map.

Mr. Ofcarcik, To follow up on that the process after last Thursday nights meeting I came in Friday and asked town clerk where do I get the official zoning map Linda was the answer. I went to the zoning dept. this is the map that is given out as the official map. The map that you have represents the original 69.

Mr. Cerrone, This one doesn't say the paragraph that Chris read so to me this is the original map. That is what I have to go by.

Mrs. Marchitto, Wasn't the discussion when I first came aboard to the town planner regarding official zoning map verses the one that was colored? His description was it SRPEDD or someone did map out of grant money?

Mr. Cerrone, Yes SRPEDD did it.

Mrs. Marchitto, It was never voted as the official map. We had this discussion at one point that we never voted and would not vote on this one.

Mr. Cerrone, That is right.

Mr. Ofcarcik, Two things I think is a follow up to your comment. If you recall I was here about two years ago we had discussion on the Old Post Rd. zoning, how it was laid. This board voted in favor of you confirm the plan the way.

Mr. Cerrone, We went by this map then too.

Mrs. Marchitto, In discussion ran into that there had been engineering on that too this I haven't seen any engineering on.

Mr. Ofcarcik, I'm building my case. The map on the wall that is the newest one.

Mr. Talerman, It is the one filed in the town clerk if there are amendments they have to be filed with town clerk that puts them into play. You have the power to change your map as you see fit to conform with to whatever the...(inaudible) are. I've represented a lot of towns I worked with Mark Bobrowski who has represented this planning board he doesn't currently and I've represented the zoning board here. Familiar with how these things work and I have no way of knowing exactly what plans are filed when. But if this map is filed with the town clerk this is operative. You could change it tomorrow to something that conforms closer to this but if this is the plan on file the map that is on file technically it's the operative map. We're not here to challenge exactly where the line is we're just looking for determination as to what are you relying on so that we can rely on it when we go in and start doing some site planning.

Mr. Sweet, How do we know that is not filed with town clerk? You're making a statement.

Mr. Ofcarcik, My answer under testimony is I asked the town clerk where do I get the official map she said to Linda. I came up Friday morning paid \$25.00 got receipt but I haven't got the map yet. This is the latest map because you recall this map now shows the decision that the board made for the correction of that line north of Hoppin Hill. Joan you were thinking I was Joan likes the overlays. Here is the 1969 assessor's map on file downstairs and if you read the records in 1969 this is the copies I gave you with it. When it was adopted in 69 it said where the boundary lines are shown approximately on the location of existing property or lot lines and are not indicated by means of figures, distance or otherwise then the property line or the lot line shall be the zoning boundary line. This is the line we're talking about that curvy line opposite Old Post Rd. no dimensions, no distance. The article says when they're not indicating by means and figures or distance the property or lot lines shall be the zoning boundary line. Keep in mind this isn't the computer generated 69. Rear lot line in 1969 so the line follows that until it gets to then it cuts across the lots in some fashion. The statement continues where a district boundary divides any lot behind the line that is adopted by the lot and could prove sizable portions the regulations for the less restricted portion shall extend not more than 30ft. into restriction. The less restricted would be commercial smaller setbacks, much less open space requirement. If the line splits your lot they're saying you can go 30ft. into the other zone with the commercial use as long as you have frontage in a commercial zone. If zone line goes right in middle you have commercial which is less restricted than residential because you can do bigger buildings you need less open space in commercial. Your commercial use could actually go 30ft. into the residential use this was 1969. That's changed now because you can't build within 25ft. of residential you have 35ft. buffer, etc. Question really focuses on this point where

it crosses through two house lots what was the Tai Restaurant, Dunkin Donuts is in the commercial zone but where is this line?

Mr. Payson, I'm pretty clear that the description at that time said beginning at a point on easterly side of South Washington St., which point is approximately 2,250ft. more or less southerly from the intersection of Old Post Rd. That is very clear to me the easterly side of South Washington St. is the layout was there it is very clear on this map there is no, it's the sideline of on easterly side of South Washington St.

Mr. Ofcarcik, But if you read what I just read on the third page. You read #1 it says where the boundary a street or way it is the centerline of the street.

Mr. Payson, I think this is clearer than that it goes up the sideline of the road.

Larry Tilton, Ray easterly side of South Washington St. at a point 2,000ft. from the intersection of Old Post Rd. and South Washington St. The true point of beginning is located down here the point of beginning is here. You label this point of beginning you would go 2,000ft. in that direction to get to what they call the true point of beginning then you go with your description. That is a way to describe a point of beginning it can actually be found because this is floating point in space.

Mr. Ofcarcik, If you keep reading your description it says easterly 600ft. sounds like a straight line right. If you measure.

Mr. Payson, I'm not going down that far I'm only going like 1ft., 1 inch. It says here beginning at easterly side of South Washington St. that is the easterly side of South Washington and Old Post Rd.

Mr. Ofcarcik, That is where you begin to measure the 2000 ft.

Mr. Payson, Right and if you look at this map it is right along line it doesn't show any dots or diddles in the road of Old Post Rd. My mind set is that the layout of Old Post Rd. on westerly side is the boundary line and that it came it to the beginning of the easterly side of South Washington St.

Mr. Tilton, Instead of going down centerline you're saying it is going down the sideline?

Mr. Payson, That is my interpretation.

Mr. Tilton, That maybe well be it. If you say now that line actually is there then make that determination it goes right down that line to point to this PI.

Mr. Ofcarcik, If we come to the corner I'm going to say Dunkin Donuts because that is where it is from there you're saying the line goes.

Mr. Payson, It's on an arc where is that arc?

Mr. Ofcarcik, You have to tell us.

Mr. Cerrone, Referring to 1969 map.

Mr. Payson, I do know that it went through the deli just a piece, it went through the house probably $\frac{3}{4}$'s of the house was residential the other $\frac{1}{4}$ was commercial.

Michael Clemmy, So the real estate misinformed me when they sold me the house? That is wrong Don I've done a good job in this town.

Mr. Payson, Arc behind the houses. Some engineer has to tell me what that arc is.

Mr. Tilton, They did on the colored plan.

Mr. Cerrone, I think you have to find the location of those houses.

Mr. Talerma, The line should be right here where you have it. If the description says to the middle of the intersection.

Mr. Tilton, They're not going by legal descriptions anymore.

Mr. Cerrone, We're going by the map.

Mr. Clemmy, This 69 map is this map that is referred in the latest zoning by-laws?

Mr. Payson, All they did was change the designations from C30 to IC30 the answer is yes.

Mr. Cerrone, These guys have been in before on other projects to get zoning determination before you bought the place you could have done that.

Mr. Ofcarcik, I'm just trying to get a point reference here we need to know what shape of that arc.

Mr. Cerrone, You could have an article at town meeting.

Mr. Ofcarcik, It's clear it's to back of the lot line.

Mr. Payson, No question there is no debate there. I think you have to draw it like...(inaudible).

Mr. Tilton, Everybody that comes in this town gets the wrong answers when they ask for the zoning.

Mr. Cerrone, That map is close it says it right on it. If you're not sure on something on zone line you come and ask. You've done it before Larry you know.

Mr. Talerman, The other element of it too and I'd be interested in the planning board's thought on this is #2 in Section 2B. It says when a dimensional or other boundary line coincides with in 10ft. or less with a property line existing at the time such boundary line is adopted the boundary shall be construed to be the property line. It's difficult to say if there intention was to follow that property line but in this case it's be a real sliver something less than 10ft.

Mr. Payson, Your client would want that because you're going to go further back.

Mr. Cerrone, It went behind those houses those houses were there before they moved the zone line.

Mr. Payson, It did go through one house I know that.

Mr. Talerman, This would have been much more clear or the town meeting action could have done it other way. It is a question at which point did they want to carve in, clearly it looks like both on this map and other map that they purposely went through a couple of residential lots.

Mr. Cerrone, They did it because when Lums wanted to come in 68 or 69 it opened up in 70. I think that was residential before then.

Mr. Payson, It went to IC30 they didn't change the zone line.

Mr. Ofcarcik, Can we just have 5-minutes?

Gloria Janick-Arthur Collins Circle, I just have an interest in the neighborhood along with the other neighbors. I'm not directly impacted but I feel I am because we love Old Post Rd. that is one of the reasons why I moved there and fell in love with the area. I'm just afraid it's changed already. I just want to preserve that historic road as much as possible. If they're going to build, going to expand we'd like it to be done correctly with some kind of buffer not 35ft. I'm basically here as an observer trying to understand I wanted to be in the process from the beginning so a year down the road I would have some history. The neighbors are going to organize right now I understand it's the early stages but they did present a plan to the neighbors back in September/October. I think there is going to be lots of problems that is going to impact Rte.1. There is going to noise, lighting issues.

Mr. Cerrone, Traffic these guys test cars right around block.

Mr. Payson, It's going to be reached with either the planning board or the zoning board buffering.

Ms. Janick, Are they going to be allowed to move the commercial zoning?

Mr. Cerrone, I go by the 69 map.

Mr. Talerman, We think the map that is determinative is the one that is currently on file. I think there is a legitimate argument as to whether or not it's reflective of prior maps and whatever happen in between I have no idea. Somehow it came to this map and we've tried to draw this best we can. I think we would like to withdraw, give it some thought, and go through the old documents. Figure out what we have to do then either we'll come back for a determination or we'll figure what are uses are on the lot and what have. We'll look at some of

the old maps, reconsider what we have to do and figure it out from there. As of right now I don't think it makes a lot sense because no one can find exactly how that curve works, if there is a curve, whether the middle of street or along that corner. I think we'd probably all be better served by just taking a breath from it.

Mr. Payson, I'm ready to make a decision on the zone line. Whether two/three weeks I think that we're pretty clear on where we think it is and then go from there.

Mr. Talerma, Are we clear as to where it is along? We want to be really clear we'd request that withdraw and hold your decision in advance and we're going to try and figure out what we have to do over here. Maybe provide some exact info as to where it comes across those lots or where it doesn't so we'd request the board for withdrawal here.

Mr. Sweet, Can I make a request that we might here from our concerned resident or neighbor if she cares to speak?

Mr. Janick, I'm here as an observer I would just like to understand what is going on. I'm here to watch the process and learn.

Mr. Payson, This meeting is really for a determination there is question where the zone line is located. They have submitted a plan to us what they think where the zone line is. We are to make that determination the planning board has to make a determination. If there is conflict if we feel the map is in conflict with their proposal then we have to make a decision as to where that line is.

Mr. Cerrone, This is the third meeting.

Mr. Clemmy, I think what we're asking to right now is this 1969 if we could have an opportunity to get that map, blow that map up have the engineers take a look at it a little better and let Larry and Glen do their thing.

Mr. Payson, I don't think that map drawn references in the book with a big arc. You gained about 30ft. going up the middle of the road we're concerned with is the neighborhood. That is going to be maybe an equation of 60ft. one way or the other I don't blame you for being concerned about it. We're as concerned as you are about 60ft. whether it's going to be commercial or residential. The whole thing you're trying to create more commercial real estate by your version of a zone line and our version of zone line is different.

Mr. Clemmy, We don't have that 69 map we'd like to have an opportunity to look at it. You pulled that 69 map and we try to come to town hall and get 69 map and they don't have it available.

Mr. Payson, I don't think that scale you could even come close to that scale that is on that.

Mr. Clemmy, Could we see the 69 map?

Mr. Talerma, What I think we'd like to do I personally having seen a lot of plans certainly not as much as the engineers and certainly familiarity with your maps that you have. It is really difficult to learn anything from this scale with that 69 map. I look at that sketch, which doesn't match up with that description that is right above it necessarily. I think what we want to do is take a step back and think about it. We don't want to be in position of having you guys issue a decree that we then might have to be in kind of an awkward position on. These are things that effect our property rights. We don't want to put a map before you you're not comfortable with either so we just want to go back and study it some more. That is all we're trying to do, we're not trying to force a determination on you we just want to go back, take a deep breath, withdraw our request and come back to you if we need a determination. If not we know based upon what you've said here at least the folks who have spoken what your present position generally is. We're not going to go out there and start doing things that run counter that until we have this locked up in a formal way. I think it takes more study to do it so we again ask to withdraw I don't think anyone is hurt by that.

Mrs. Marchitto, Mr. Houle, and Mr. Sweet, Have no problem with that.
Mr. Talerman, You want me to put it in writing.
Mr. Payson, Reading withdrawal from application without prejudice.
Mr. Sweet, Make a motion we accept that, seconded by Dick Houle.
Mr. Payson, Hearing no further discussion all in favor 5 to 0.