TILTON PLANNING BOARD  
June 9, 2009 – Meeting Minutes

Members Present:  Sarah Paratore – Chair, Mike Curley – Vice Chair, Nick Canzano,  
Robert Haberman, Deana Cowan, & Katherine Dawson, Ex Officio

(Member not present: James Dwyer)

Others Present:  James & Marie Patten, Jeffery & Amy Fournier, Casey Curley, &  
Lenny Birke

AGENDA
6:30 p.m.  Call to Order  
Minutes of the May 26, 2009  
Correspondence, any other business

6:35 p.m.  Case #09-11 for Site Plan for Jeff Fournier. Applicant proposes a change of use to  
convert a residence to ice cream/sandwich shop with a residence on the second floor.  
Property is located at 490 Laconia Rd, Tilton, NH 03276. Tax Map R10 Lot 7A

Meeting:

6:30 p.m.  The meeting was called to order.

Chair asked if the members had reviewed the meeting minutes from May 26, 2009 meeting.

Chair moved to accept the minutes with some corrections, seconded by Mike Curley.  
Vote taken, motion passed to accept the minutes.

Correspondence:

•  Sustainable Land Development  (May 2009)  
•  Announcement from DES – Water Resources Plan Process: Municipalities Have a Crucial Stake.  Describes how municipalities can manage and protect their water resources.  
•  Notice of Gilford Planning Board Meeting – 6-15-09 at 7 p.m. Crown Castel USA, Inc proposes to remove 2 existing telecommunications towers, construct a new 182 ft telecommunication tower, add 24 antennas & expand shelter on Cherry Valley Rd. (Regional impact)  
•  Knowing the Territory -2009 Edition (1 copy mailed to each municipalities)  
•  Copy of Sarah email to Sandy Plessner concerning South Bay  
•  Copy Sarah’s email to the Select board members, code enforcement & Nick Canzano.

The Chair passed out material concerning the Tri-Town Aquifer and asked the members to review.  Erica Anderson of LRPC would like our input.  She would like to come in and discuss.  There are no cases scheduled for June 23rd so a workshop will be scheduled have Erica come in and work on the Tilton Drinking Water Protection Ordinance.  Augusta will post an agenda.

6:35 p.m.  Case #09-11 for Site Plan for Jeff Fournier. Applicant proposes a change of use to  
convert a residence to ice cream/sandwich shop with a residence on the second floor.  
Property is located at 490 Laconia Rd, Tilton, NH 03276. Tax Map R10 Lot 7A
The Chairman move to accept the application as being substantially complete. Seconded by Mike Curley, vote taken, motion passed to accept the application.

Jeff Fournier introduced himself and his wife Amy to the board.

We are interested in purchasing the property at 490 Laconia Rd across from Smoke & Barley store to convert the house into an ice cream stand and eventually add a sandwich shop. We would offer a limited line of sandwiches from crave meats like roast beef, ham, turkey/chicken with soups and salads. We have contacted Shain’s of Maine as our ice cream distributor.

This building has a lot of charm and usage. We have 3 children under the age of five. This building has an apartment on the 2nd floor and a pool which works well for our family needs.

The property itself has an old colonial style building that we are not trying to modify in anyway but to enhance its charm. We are planning to add a farmer’s porch with a canopy on the side. The landscaping will be enhanced making a country relaxed atmosphere. The proposed name is the “Melt Away”. The property has a gravel parking lot which we are not going to change but improve and put in rock walls.

The interior of the building has 4 fireplaces and plan is to have limited seating once the sandwich portion is up and running. The plan is to open the ice cream stand as quick as possible. The next phase is to offer sandwiches on an order out only bases and eventually have the inside seating.

We applied for a driveway permit which DOT expedited. The Fire Dept have been out to the property and showed us what would be needed at the various phases. As we complete each phase they will be back out for inspection.

We have met with Johanna in the Sewer Dept to find out what we need to do to hook up to the sewer. The property does have a septic system but I don’t think that it will be sufficient for a commercial business. I already have bid from contractors to do the hookup.

We have a purchase and sales agreement with Debra Daggett which ends soon. We have done all we can at this point if this site plan doesn’t get approved then we are not interested in the property as a residence. I feel we would offer a lot to the community and would be good neighbors.

Chairman confirms that the Fournier’s have been before the ZBA for a “Special Exception” that was granted to operate ice cream/sandwich shop. You have also received an approved driveway permit from DOT.

On your plan the parking is shown at 90’ x 100’ how many parking spaces do you have.

Jeff thinks that there are 25 to 30 spaces but there is additional parking around the garage. This is the old Superior Fence building which had a very large parking area.
Discussion open to the public:

The Patten’s think that this use of the property is great idea.

Lenny Birke thinks that this is a great idea.

Casey Curley thinks that having an ice cream stand is great and she can walk to it.

Discussion closed to the public and reopened to the board.

Mr. Haberman asked if they plan to be connected to the sewer and when is the target date for opening.

The Fournier’s confirmed that they will be connecting to the sewer. The projected opening date is probably 45 days after closing but there are many variables so we can’t pinpoint an exact opening date.

A question was asked about hours of operation. In season 11 am to 9 or 10 pm off season 11am to 8 pm.

Outside seating area: There will be seating under the canopy and across the driveway there is a slope area that we would like to put seating by building a rock wall.

Katherine Dawson asked about the parking in the lower area near the brook. She asked Lenny Birke noted that the brook is so far back from where they are going to be parking. The parking area is gravel and well defined. Katherine notes that even if it existing it must comply with the town’s wetlands ordinance. Lenny confirms that it doesn’t even get wet by the fence line.

The Chair asked if we should asked for measured drawing showing lighting, snow storage, etc. locust drawing.

Chairman Paratore made a motion to approve the application for Case #09-11 to convert the residence to an ice cream/sandwich shop with a residence on the 2nd floor with the following conditions:

1. Must submit a more detailed measured drawing that includes snow storage area, lighting, signage and location of the sign.
2. Compliance with all state fire codes.
3. Compliance with all federal, state and local permits.
4. Compliance with Town of Tilton signage ordinance.
5. Compliance with Town of Tilton lighting ordinance.

Motion seconded by Mike Curley. The motion has been made and seconded all in favor. Vote taken and MOTION PASSED.

Other Business:

South Bay issue needs to be discussed.
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Nick Canzano believes there was email sent out. Basically the Code Enforcement Officer had gone to South Bay to look into some complaints that had come into the town hall. The Code Enforcement officer sent out a cease and desist wanting everyone off the property.

Katherine Dawson asked if he wanted everyone off or just the year round renters.

Nick explained that they have such a high turn around over there. Some live there a month, two months or a couple of weeks. Some people have been there 6 or 8 months. What has happened is when South Bay was approved for condominiums our intention was to finish the projects. The real estate market tanked putting a damper on the project. I advised them not to start the project because they would lose their shirt. Just to do the site/road work to get the project started was almost $200,000. The owners have large mortgage payment each month.

If the town goes in and tells them that everyone has to go and you have to try to do business in another manner they will go out of business. The town won’t get their taxes, and you will displace a lot of people that need to have a place to stay. So what do we do?

Chairman explains the choices we have according to the Local Government Center are:

1) If the approval was within a year the ZBA could revert back to non-conforming use but the time frame has past.

2) The Planning Board can waive a condition or regulation for a set period of time. We can’t waive the first condition exempting the applicant from the zoning ordinance of the dwelling unit.

The Chairman’s question to the board is this something we should encourage the applicant to appeal for a waiver of a condition and would that help relieve the problem for a set period of time or is this an item that should go to Selectmen for them to discuss.

Nick thought the email said that they should go before the ZBA. Katherine Dawson explained that the email said we should group and discuss.

The Chair explained that the lawyer she spoke to at LGC explained this type of situation is happening all over the state. The lawyer stated “that the town to consider whether there are ways to avoid the problems that could arise by working out a temporary agreement with the owner that would allow the owner to weather the bad economy and prevent the town from owning more abandoned property and receiving less tax revenue.”

The Chair notes in my humble opinion that it would be better to the town to work something out that doesn’t last for a long period of time but allows the owner to move on and survive.

Katherine Dawson notes that we can only work within what the law allows us to do. Do we make an exception with this property now you are open to making exception to all properties with similar problems?
Katherine suggest that the property owner needs to come up with a plan of what is going to work and present it to the Planning Board for them to review. This would all have to be by the book with an application and notification for abutters and meeting scheduled.

Mike Curley - This has to be a plan that doesn’t put any more burdens on the town.

Katherine Dawson - It needs to come from the property owner and comply as closely with our zoning as it possibly can.

Mike Curley - If we give them an exception allowing them to be dwelling units for a period of time, we can’t. So how long a period of time could we let them rent for.

Deana Cowan asked Nick what type of relief the owner is looking for?

Nick Canzano states he is looking relief of some sort to allow the owner to continue to run his business the way he is for a couple of years until the economy/market improves.

The problem is there are people living there 12 months out of the year in the cottages?

Maybe in a couple but for the most part they are transient who come in stay a week or 2 to 3 months. That is why there is always a sign out there for rent.

Katherine Dawson states that he is being told that he has to comply with current site plan that he was approved for which is transient only. We can toss this around forever but until we have a proposal from the owner where we can review and say we no we can’t make exception here or we could make an exception.

The board really needs to determine what transient means.

Nick notes this property was originally a resort. The owner still rents the cottages for different periods of time some may few weeks, month or 6 months so they are not really residence. What qualifies a residence in the state of NH? Any person who dwells in a unit for more than 90 days determines a residence.

The Chair comments that in this town the size of the building determines whether it is a dwelling unit.

Katherine Dawson asked Nick what is going to work for this property owner.

Nick thinks if we ask him to run it as a resort and ask him to apply the same conditions he had with the State of NH for the rooms and meals tax.

Katherine Dawson – I could walk in there tomorrow and say I need a place and he rent it me for a long as I wanted to stay as long as he gets his rent every month.

The Chair – I think a solution will take all of us putting our heads together to figure how this person can comply.

The town says comply and he can’t make his mortgage payment he loses the property but people would have no place to live but may stay there anyway the police have keep going there to make them leave. The other sides of the coin, not to have him comply
and have no regulations the place will run amuck with people living there with no over
site. Somewhere in the middle there might be a happy medium. The planning board
needs to decide whether we feel we can waive a condition or regulation for a set period
of time. We have the authority in zoning ordinances to issue waivers or whether the
ZBA should be the ones to grant them a variance but the variance would be indefinitely.

Katherine notes the only waiver that would work here is back to the dwelling units. He
needs to switch them from condominium to apartments, dwelling units. These have
always been non-dwelling as they were a resort. These are non-dwelling as they are
under 650 sq ft so we if make an exception which we can’t do because that would be
changing zoning and we do not have the authority to do.

Nick notes that there is no really clear solution here unless the town makes some special
exception as to what there zoning is and what their ordinances are then we are not going
to accomplish anything.

The owner can not expand the building because it state in his site plan approval that no
further expansion is permitted. This could be an area we could waiver. The board didn’t
want him to expand the buildings which would put an additional tax burden on the school
system.

After much discussion by the board members as how we could help solve this issue.

Nick suggested that we call a special meeting with the all the board and selectmen to
see if we could resolve this.

Deana Cowan suggested to Nick that the owner should come up with a plan of what they
are looking. Is he looking at doing 90 day rentals or long term rentals? What are the
owner’s goals?

Nick doesn’t feel that owner needs to a come up plan what he needs is relief.

Mr. Haberman raised concerns about the board’s social responsibility in these rough
economic times and feels that these responsibilities should be considered, as they were
in past recessions, when making decisions around issues like South Bay.”

Katherine replied that “we are not here to be humanitarians. We are here to enforce the
towns zoning. We can only do what the law allows us to do.”

The Chair agrees that the land board and select boards should meet but I think it would
be wise to go in with some type of option or choices.

Katherine Dawson feels that we should discuss with the planning and zoning boards.

The Chair suggests that what if the property owner would agree to do summer rentals
and winter rentals. As of September 1st everyone leaves then a new group would come
in for the winter. That is plodding the regulations; it’s relieving a condition that would be
unfair to do. That wouldn’t require any waiver of condition or a special variance it would
just adhere to what’s already been agreed upon with a plan and series of visit from the
police or code enforcement to verify that this is taking place. This would only be for a set
period of time as there is an approved site plan in place. The site plan was approved in
April of 2007 and if he doesn’t make substantial improvement within 2 years he will have to redo the site plan.

The Chair states we will notify the selectmen that we have to come up with this solution/idea for this particular problem and they will have to withdraw their enforcement.

Motion made by Chairman Paratore that the board send a note to the selectmen and suggest that a 6 month continued stay at which time everyone has to turn over. Also a program put in place with the code enforcement or the police to make sure that this is happening. Documentation of the renters will be required. This program will be in place for a period of one year.

Motion seconded by Katherine Dawson, the motion has moved and seconded all in favor. The vote was taken motion passed.

Motion made by Deana Cowan to adjourn, seconded by Sarah Paratore, vote taken and passed.

Minutes prepared by Augusta Marsh, Land Use Assistant.

(These minutes are subject to the review and approval by the Planning Board at the next scheduled meeting.)

**These minutes were approved at the Planning Board meeting held on Sept 8, 2009.**